CONVENCION Nov. 19, 1934

APERTURA DE LA SESION

Se abre la sesion a las 3 p. m., bajo la presidencia del Presidente, Hon. Claro M. Recto.

EL PRESIDENTE. Lease la lista de los Sres. Delegados.

MR. GANONOY. Mr. President, I move that the reading of the roll call be dispensed with.

EL PRESIDENTE. Se ha pedido que se dispense la lectura de la lista de los Sres. Delegados. Hay alguna objecion (Silencio). La Mesa no oye ninguna. Se diepensa la lectura de la lista. Hay quorum.

MR. GANONOY. Mr. President, I move also that the reading of the minutes be dispensed with.

EL PRESIDENTE. Hay alguna objecion? (Silencio). La Mesa no oye ninguna. Aprobada.

EL SECRETARIO, leyendo:

P E T I C I ON

Resolution of the Municipal council of Bani, Pangasinan advocating for the nationalization of retail business (P. R. 154).

The PRESIDENT. To the Committee on Sponsorship.

CABLEGRAM RECEIVED

Washington, November 16, 1934.

Murphy, Manila.

For Recto: Please accept and convey to the Constitutional Convention my very deep appreciation of their good wishes.

QUEZON.

Cez."

THE PRESIDENT. To the Archives.

EL PRESIDENTE. Estan en orden las enmiendas.

EL SECRETATIO? leyendo:

ENMIENDA LIM

En la pagina 3, linea 2, entre la cifra "1" y la palabra "No." insertese lo siguiente: "No person shall be punsihed with the penalty of death."

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EL PRESIDENTE. Que dice el Comite?

SR. ARANETA. Sr. Presidente, propondria que se pase a otra enmienda, ya que el Sr. Lim esta ausente.

EL PRESIDENTE. Vamos a hacerlo por orden, porque si no, habra confusion. Que dice el Comite?

SR. SOTTO (F.). El Comite no acepta la enmienda.

EL PRESIDENTE. Alguien desea hablar en favor de la enmienda.

SR. SAGUIN. Sr. Presidente, para un turno en contra de la enmienda.

SR. PERFECTO. Sr. Presidente, para un turno en pro.

EL PRESIDENTE. Tiene la palabra el Sr. Delegado por Manila.

DISCURSO EN PRO DEL SR. PERFECTO.

SR. PERFECTO. Sr. Presidente, apoyo la enmienda, porque creo que la pena de muerte esta mal llamada pena. Para que una pena sea tal, desde el punto de vista de la criminologia debe ser algo que, no solamente cause sufrimiento al acusado, sino que tambien, le de oportunidad de enmendarse le corrije La pena de muerte, muchas veces, no causa sufrimiento; antes bien, muchas veces, es una oportunidad para terminar con todos los sufrimientos, La Muerte no correge.

No he de emplear mas palabras para sostener esta enmienda y solo deseo terminat diciendo que la pena de muerte viola fundamentalmente todos los principios de una sana criminologia

Por tanto, pido que sea aprobada la enmienda.

EL PRESIDENTE. Tiene la palabra el Srl Delegado por Zamboanga.

DISCURSO EN CONTRA DEL SR. SAGUIN

SR. SAGUIN. Mro Presidente. al levantarme hoy para oponerme a la enmienda, no quiero aducir aqui razones academicas, porque estas son muy bien conocidas por todos, especialmente por los abogados. Razones practicas son las que me mueven a atacer la enmienda.

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Para comenzar, les dire que cuando era escolar, sostenia una ppinion contraria a la pena capital. Me horririzaba que le pena de muerte se imponga al acusado. pero al correr de los tiempos, sobre todo, al ejercer ya la profesion en mi region, he visto crimenes realmente espeluznantes, crimines horrendos que, para mi concppcion, no necessitan otra pena mas adecuada que la de l a pena de muerte, la pena capital. Para ciertos criminales empedernidos de Mindanao, por ejemplo, especialmente, para los criminales de las regiones apartadas, la pena de prision no surte ningun efecto. Yo ha conocido a criminales confinados en la colonia penal de San Ramon que consideran la pena de cadena perpetua como una bendicion; es mas, estan alli por varios años, se han adoptado de tal manera a la vida de prision, que incluvsive se resisten a salir de ella, porque se encontraban tan a su gusto que quierian permanecer en la carcel. Pra esa clase de persons, que no ncuentra en la pena de prision el correctiva necesario, si llegan a cometer eos crimenes horrendos a que me he referido antes, la pena mas adecuada es la de muerte. La pena capital es un remedio, para cortar de alguna manera, la criminalidad que existe en cierto secto de nuestro pais.

Por estas consideraciones, yo apelo al buen juicio de los Caballeros de esta Convencion para que rechacen la enmienda objeto hoy de nuestra consideracion.

SR. ORTIZ. Sr. Presidente, para algunas preguntas al orador.

EL PRESIDENTE. El orador puede contestar, si le place.

SR. SAGUIN. Si, señor; com mucho gusto.

SR. ORTIZ. No cree S. que la imposicion de la pena de muerte es una infraccion del quinto mandamiento?

SR. SAGUIN. Infraccion talmente, no lo es, porque no se mata a la persona por matar, sino que se aplica la muerte como un castigo. Ademas, prescindamos de esas razones mas o menos sentimentales o academicas. Vamos a la realidad de los hechos.

Vamos con fecuencia crimines tan horrendos que nuestra conciencia no se siente satisfacha por cualquiera pena que se imponga al reo, fuera de la pena capital.

SR. ORTIZ (M.). No es ninguna razon sentimenta; precisamente es una razon practica fundamental.

SR. SAGUIN. No infringimos el quinto mandamiento con la pena cpital.

SR. ORTIZ (M.). "l quinto mandameinto prohibe taxativamente mater, y eso no se puede modificar porque es absoluto.

SR. SAGUIN. Creo haber contestado ya a S. S.

SR. ENRIQUES Sr. Presidente, para algunas preguntas al orador.

EL PRESIDENTE. El orador puede contestar si le placé.

SR. SAGUIN. Si, señor.

SR. ENRIQUEZ. S. S. niega al hombre la idea de poder redrmarse?

SR. SAGUIN. Como regla general, no lo niego; pero hay casos excepcionales; cuando se cometen, realmente crimines horrendos, la sociedad no se siente satisfacha sino con la imposicion de la pena capital. Esos que S. S. tiene en la mente son casos excepcionales. Por gegla general, acepto como bueno el principio.

SR. ENRIQUEZ. No sabe S. S. que segun los santos Escritos, personas que en esta vida han sido muy malvadas, en las postrimerias de su existencia se volvieron muy buenas y santas? No cree S. SI que el mayor pena para esos es la pend de muerte?

SR. SAGUIN. Existe la posibilidad; pero no vamos a considerar esas posibilidades de reforma. Queremos cortar el mal, y hay que cortarlo de raiz.

SR. ENRIQUEZ. Que dice S. S. de la actitud de España que primeramente abolio la pena de muerte, pero que despues la volvio a insertar en su constitucion?

SR. SAGUIN. Yo creo que se vieron en la necesidad de imponer la pena de muerte, como un remedio para ciertos casos.

SR. PAREDES. Sr. Presidente, para algunas preguntas al orador.

L PRESIDENTE. El orador puede contestar, si le place.

SR. SAGUIN. Si, señor.

SR. PAREDES. S. S. cree que la pena debe ser proporcional al delito cometido?

SR. SAGIN. Creo que si.

SR. PAREDES. Que me dice S. S. del que ha cometido cuadruple asesinato, podemos materlo cuatro veces?

SR. SAGUIN. S. S. pide un imposible.

SR. PAREDES. Donde esta alli la proporcion de la pena que S. A. admite?

SR. SAGUIN. Yo entiendo que con matarle una vez, hemos llegado a la maxima proporcion.

SR. PAREDES. Puede S. S. con la vida de una persona la vida de cuatro personas?

SR. SAGUIN. Claro que no; pero, al menos he quedado reivindicada la sociedad por el crimen horrendo cometido, con la imposicion al reo de la pena capital.

SR. PAREDES. S. S. sostiene que la sociedad se contenta como que se mate al mismo criminal, aunque haya matado a un regiminto?

SR. SAGUIN. Creo que si.

MR. MONTESA. Mr. President, will the gentleman yield?

THE PRESIDENT. The gentleman may yield if he so desires.

MR. SAGUIN. Willingly.

MR. MONTESA. On imposing the penalty of death, you are takinfthe life of a person. Are you taking the life by stopping the person who committed the crime, or stopping the crime by taking the life of a person?

MR. SAGUIN. On imposing the penalty of death you are to take the life of a person.

MR. MONTESA. Yes, sir.....

MR. SAGUIN. Will the gentleman please repeat the question because I was not able to get his question?

MR. MONTESA. Is the penalty of death you want to take the life of a person, in taking the life of a person, are you stopping the life of a person by taking that life or stopping the crime by the taking of the life of a person?

SR. SAGUIN. En ese caso, el objeto de la pena que se impone al acusado no es solamente el pago, digamoslo asi, del crimen que ha cometido, sino que precisamente sirva tambien de escaramiento para los demas, a fin de evitar que se cometan crimenes de esa naturaléza.

MR. MONTESA. Al right. Now, you admit that you take the life, because you want to stop the crime. From the time immemorial, the penalty of death is imposed to criminal. Has it ever been stopped? No.

SR. SAGUIN. Coertamente que no.

MOR. MONTESA. Do you believe in the tenth commandment.

SR. SAGUIN. Por que no lo voy a creer?

MR. MONTESA. All right, it says not to kill. It does not explain where to kill a person, because hé committed a criem, I would like to year your opinion.

MR. SAGUIN. Bueno; ya he contestado legeramente esa pregunta que me dirigio hace un momento el Delegado por Surigao. Como dije, al levantarme de imprèviso para oponerme esta enmienda, no me baso en razones academicas. No me he preparado para afrontar estas cuestiones academicas, sino que me baso en razones practicas fundadas en la experiencia que he tenido en la region donde ejerzo mi profesion. Alli la criminalidad es horrible; se dan casos de cuadruples y qùituples asesinatos con todas la agravantes. Si llega-seis a respirar aquel ambiente, ustedes convendrian que la pena capital es necesario que se imponga en algunas casos.

Como ya dije al principio, cuando era estudiante de Derecho, me horririzaba el que a un acusado se le pmpusiera la pena capital; pero las experiencias amrgas, la realidad de los hechos mehan hecho cambiar de opinion, y creo que la abolicion de la pena capital seria otro factor mas para fomentar la criminalidad, o cuando menos para conseguir su disminucion o supresion en esa region.

MR. BUSLON. I have a similar amendment to that. I would like that it be considered together with this amendment of Mr. Lim. I havethe same amendment.

EL PRESIDENTE. You may speak in favor of your amendment.

El Delegado por Bohol desea consumir un turno en contra.

SR. BUSLON. Ese es precisamente mi objeto.

SR. LIM. Sr. Presidente, quisiera que seme reservase el derecho de ser el ultimo en hablar sobre esta cuestion, y por lo tanto, cedo al Delegado por Bohol, Sr. Buslon ú tiempo necesario para hablar.

SR. NEPOMUCENO.(R.). Para un turno en contra.

EL PRESIDENTE. Tiene la palabra el Delegado por Bohol.

DISCURSO DEL SR. BUSLON.

MR. BUSLON. Mr. President and gentlemen of the Convntion: There are several reasons advanced by those who favor capital punishment. One, and probably the most important reason is that capital punishment is a deterrent to crime. And the other reason is that if there are so many criminals being confiend in certain prisons, the state would not be able to feed all thos, especially in time of national danger where many persons are accused, for instance, like in Spain. Now, in Spain, there is revolution; the jails are filled with prisoners and the state may not have enough means to feed those criminals. But I am going o deal first on the beliefe or on the theory advanced by those who favor criminal punisment of death

that it is a deterrent to crimes. It has been said that a criminal is simply sick. The theory of modern times is that the criminal is simply sick. When a person commits a crime, he is simply not using his best judgment. It is said in our Penal Code that there are crimes which are committed with premiditation, cold-bloodd murders, but even in these cases, the criminal is impelled by other motives which may be beyond his control, and he may not have been clamed for those motives which impelled him to commit the crime. It has been said and it is said with much reason that in England, a certain Chaplain of a certain prison said that out of one hundred and forty seven persons who wre put to death, one hudred and forty five of those persons have witnessed the execution before they were put into the scaffold. And it has been said and it has been proven with statistics in other countries, that where tis pnalty has been used indiscriminately, especially in times of national danger, crimes which are punishable with death have multiplied to a big proportion, so that all civilized countries of today, most of them have already abolished the capital punishment, because thy have been convinced that capital punishment is not an effectice check to the commission of crimes. And those countris which have not abolished capital punishment have limited this punishment under certin cases and under certin conditions. An in those countries where capital punishment has been abolished, it has been proven by statistics that the tendency to commit crimes punsihable by death formerly, has not increased in any way.

I just want to read the names of those countries which hve abolished capital punishment, just to show that in thos countries where capital punishment is still retained in their statutes books, these are countries which are not so progressive and not so modern because capital punishment

is the only method of punishment devised by primitive men nd by the Barbarians. It is a survival, therefore, of the practice in vogue during barbarous times. Austria, for instance, abolished capital punishment in 1914, but they have provided in their Penal Code that only in ties of national danger and under martial law may capital punishment be inflicted. Itally also has abolished capital punish.-ment in 1889, and Mossulini came into power, because there attempts against his life, they introduced capital punishment in 1926, but they have to abolish it definitely two years ago. We have Rumania, we have Sweden who abolished capital punishment in 1924; Belgiu, in 1863.

Even in time of the World War there were may Germans who were prisoners of the Belgians, and public sntiment was high gainst thse German prisoners, but the Belgian courts tried to reenact the death penalty. Denmar sin 1891, Finland since 1826, some of us might think that Germany will be the last nation to abolish the capital punishemtn, but not all the German states are in favor of capital punisn-ment.

MR. VENTURA. Mr President, will the gentleman yield?

THE PRESIDENT. The gentleman may yield, if he so desires.

MR. BUSLON. Willingly.

MR. VENTURA. Are you not in favor of the imposition of death penalty even with treason or acts of derogatory to the Goverrment.

MR. BUSLON. Specially do I not like a man to be put to death simply because he has committed a political offense.

MR. VENTURA. Well, if it is high treason and the offense against the life of a Chief Executives of the nation.

MR. BUSLON. Yes, as regards hightreason, even in that case, Mr. President, I am not in favor of inflicting the death penalty, because in the first place, I think since the United

States became independent in 1776 until now, in its 150 years of existence, I know only of one who was a traitor to the nation. I do not know during the World War how many were classified as traitors to the nation of the United States, and that being the case, it is very easy indeed for the government to watch, to take care of one or two, or even ten traitors rather than put one of those to death, because Mr. Presidet, one reason why I do not favor capital punishment in any circumstance is that judges are not infallible. If you put to death a man who is innocent, you cannot compensate anymore his life.

MR. VNTURA. But that is on the assumption that the man is innocent, but when the proof is conclusive that he has committed a capital offense, why, he should be put to death because that is the only means of saving the state.

MR. BUSLON. Yes, Mr. President, I think the gentleman from Ilocos Norte is a lawyer like myself and he has had the experience of cases in court where the evidence id very convincing against an accused; nevertheless that accused is not kiled but he has to be convicted because that is a law.

MR. VENTURA. It is true also that in all cases where a life has been lost or tat a man has killed a person, that he is to be deprived of life in rare cases when all he elements raised from the degree of homicide to murder may deprive him of his life.

MR. BUSLON. Very rare cases.

MR. VENTURA. You remember that in all cases of homicide a man may be deprived of his life?

MR. BUSLON. Yes, sir.

MR. VENTURA. But very rare cases may be he is sentence to death?

MR. BUSLON. Yes sir.

MR. VENTURA. So that in the argment you have adduce, you have proceeded on the assumption that when a man has committed homicide, he will be sentenced to death although in very rare occasions.

MR. BUSLON. Even in our penal Code at present, it is o is only when he commits muder that he ais going to be put to death, and when the decision of the Supreme Court is unanimous.

MR. VENTURA. Unanimous! So there is a sufficient safeguard for the life of the criminal.

MR. BUSLON. I admit that there is sufficient safeguard now against the criminal, but for the simple reason that man is fallible, I am going to sustain my theory that I better free one hundred criminals than kill one person.

MR. VENTURA. What is your penalty on special and few cases like high treason when the death penalty will be imposed?

MR. BUSLON. Even in war times, when we are at war like Siam, and we have ten traitors, we cn easily keep them in Bilibid although they will not last ten or twenty years.

MR. NIERE. Mr. President, will the gentleman yield?

THE PRESIDENT. The gentleman may yild, if he so desires.

MR. BUSLON. Willingly.

MR. NIERE. Is it not true that one of the primordial duties of the state is to protect life?

MR. BUSLON. Yes, sir.

MR. NIERE. How then could it enforce o protec th lives of the eople without impsoing death penalty to those who kill other people?

MR. BUSLON. I will answer it. The killer has just as much life as the onekilled.

MR. NIERE. Then, how can you sffoguard the lives of the people without due execution?

MR. BUSLON. I am going to answer that. I said that the criminal has as much life as the ones who are killed and those who ared dead are dead. Now, I said in the beginning that XX under modern theory, a criminal, no matter what kind of crime he has committed, is simply sick. He may be impelled to commit the crime by other reasons, other circumstances which are beyond his control. Now, if life is very dear to the state, then it is also the dity of the state, instead of killing the criminal, of curing the criminal so that he will become a good citizen.

MR. NIERE. So you are with me.

MR. BUSLON. I am going to add to my reason, that the theory is that the criminal is a sick man.

MR. NIERE. Then you believe with me that a criminal is compard as a sick person.

MR. BUSLON. Yes, sir.

MR. NIERE. Well, do you believe that in surgery, as when n organ is completely useless, we have to cut it in order to avoid any progress of thedisease to be spread?

MR. BUSLON. I am not a physician, but I know that they usually take away the organ which is useless already.

MR. NIERE. I am a physician.

MR. BUSLON. But I do not see any parallel to the useless organ and to the criminal. The organ is only a part of the body; we are treting now the whole body.

MR. NIERE. Yes, but the individual is a part of the group of people.

MR. BUSLON. And he is one of those whom the government is bound to protect.

THE PRESIDENT. The time of the gentleman has expired.

MR. CABARROGUIS. Pas un turno en contra.

EL PRESIDENTE. Tiene la palabra el Caballero por Marinduque.

MR. HERMOGENES (R.). Mr. President and Gentlemen of the convention: I regret to have to disagree with the distinguished gentleman who has just preceded me, and to go and speak against an amendment presented by a delegate so distinguished as the gentleman from Manila. But I have to confess, Mr. President, that... I think there ae more reasons than one, each of them, important enough to sway this constitutional convention to vote against the proposed amendment. I should have wished to have studied this question seriously befoe hand and before speaking against the amdnemtn but as the copies of the amendment are just being distributed I will do to the best of my ability to adduce the reaons against the approval of the amendment. I agree, Mr. President, to the theory that s far as practicable, life must be saved particularly by the stat. I gree also with the theory tat as a general rule almost allthe criminals in any country are susceptible of regeneration. But ti could not be doubted, Mr. President, and gentlemen of the cnvention, that there are extreme cases where criminals can no longer be regenerated. There are cases where cirminals can no longer be regenerated. There are cases where crimes so hineous so grave, so serious they are committed agins the state and the life of the citizens that there can be no other remedy than to impose the death penalty for the protection of the state add the people under the jurisdiction of the state. In the second place, Mr. President, I think it is the part of the wisdom and that the public policy is to leave this matter to the hands of the legislature. Sucy is the case at present in the Philippine Islands. I am aginst the application of the death p alty in all cases, in all serious cass, even, but I am satisfied with the conditins existing at present in the Islands in so far as the pepplication of the death penalty is concerned. The very strong guar

is concerned. They very strong guaraty is accorded to criminals before the dath penalty is imposed. It is not enoughy that the judge of the court of first instance after hearing all the vidence for and aginst the accused sentences him to the death penalty. It is not enough that the case is carried and rargued in the Supreme Court but it is also necessary that the decision of the Supreme court must be unanimous and after a conscientious study of the case, mt. President, when the members of the Supreme Court taking into consideration the ulmot vaue of life sentences a persons to death penalty I thinkit isa sufficient prof, Mr. President, that the man is really guilty hd deserves the penaltyof death. Furthermore, the present peaceful conditions of our country may not be permanent. Organized cirmes as now existing in the United States and other parts of hecivilized world may a thing of tommorrw in this country and when crime roganizes itself to attack the very foundation of the government and imperil the country I think it is proper and i s the duty of thestate to protect itself and thecitizens by imposing the death penalty in case of ncessity. Should we adopt this amendent, Mr. President, I am afraid that in case of war when it is necessary for the army of the Philippne Government to impose the death penalty it may find itself impeded from imposing death penalty in case of necessity. A foreign spy in the service of an aline nemy government may bring destruction to the lives of Filipino citizens and that by reasons of this amendment it may find itself disable and impotent to protect itself againstthe aline enemy and aginst the spy working in the service against the Philippine Islands. It is not necessary for me to speak at alength on this subject. In the United States wholesale murders have been committed by members of an organize crime. Cases so serious have

also been committed there. Tht deserves the imposition of death penalty. We have for example, an outstanding case-the idnapping of the Lindberg Baby. Such cass have not yet happened in the Philippines but we cannot foretellwhat will happen in the future. The crime of Kidnapping and the commission of murder may become rampant some day in the philippine Islands and shold we approve tis amdnemtn we should rgret that this amendment has been adopted by theconvention. Fort the safety, therefore, Mr, President, of the citizens of the state and for the protection of the state itself, I object to this amendment and requst that the same be disapproved.

MR. GRAGEDA. Mr. President, will the gentleman yield to a question?

THE PRESIDENT. The gentleman from Marinduque may answer if he so desires.

MRL NEPOMUCENO (\$.) With pleausre, Mr. President.

MR. GRAGEDA. Mr. President, does not the unanimous ecision by the members of the Supreme Court preclude of a possibility that thedecision may be erroneous.

MR. NEPOMUCEN) (R.) The unanimous decision of the Suprem Court does not absolutely preclude the possiblity that the decision may be wrong.

MR. GRAGEDA. In other words, in spite of the unanimous decision of the Supreme Court, that although a mani is convicted, he might still be innocent?

MR. NEPOMUCENO (R.) He might be incent; but that is a very extreme case.

MR. RAMOS. Para una informacion señor President.

S. S. segun he oido admite la posibilidad de que aun con toda la opinion unanime de los Magistrados de la Corte Suprema, podria ocurir el hecho de que se condene a uno a la pena capital, no obstante ser inocente.

SR. NEPOMUCENO R. Si, señor, yo digo que es posible que la decision sea arronea, pero tambien digo

ge la decision unamine de 9 magistrados es una garatia muy fuerte contrala comisin de un error judicial.

SR. RAMOS. Para el case de ge esa posibilidad ocurra, no cre S. S. que el que se haya cometido una injusticia ya no tiene peparacion alguna,porque se la ha condenado a la pena capital y desues se descubre que el condnado es inocente; en ese caso el daño es irreparable. Mientras,por otro lado, si se elimina la pena capital, si se descubre despues que el condenado es inocente todavia se podra lobriar el error.

SR. NEPOMUCENO. (R.) Para contestar al cabalero, yo dia que tengo mas fe en la decision inanime de nueve magistrados que en la opinion de una persona que esos neve migistrados han errado.

SR. RAMOS. Le voy a poner un caso; no se si lo ha oido S. S. En mi provincia hace mucho tiempo uno ha sido cojdenado a la pena de muerte por haber asesinado a una persona cuyo cuerpo se decia que fue encontrdo en la sementera. Pec al cabo cierto tiempo, despues de la ejecution de la pena impuesta al condenado, la persona que se decia fue meurta apareciol. No cre S. S. que ese es un caso que justifica la obolicion de la pena capital que se provee en el pryecto de constitucion?

SR. NEPOCUENO. (R.) No lo creo ; ese es un caso de lo mas raro que pede ocurrir posiblemente encada mil o diez mil casos.

SR. RAMOS. LIamese raro a lo que sea, lo cierto es que hay mas posibilidd de reparar un daño en ese cso que aplicr la pena capital al condenado que despue se dscubre que es inocente. ?No cree S. S. que es mas justo, mas equitativo que imponer precisamente a uno la pena de muerte que despues de descubre que es inocente ?

SR. NEPOMUCENO (R.) Debemos taner en cuenta que si ponemos

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ponemos en libertad o en una situacion en que el reo puede estar en libertad algun dia, el ciriminal, al salir de la carcel, pude destruir mas vidas que las que puede destruir el Estado, y yo siempre sigo aquella teoria de que la salud de la comunidad es la suprma ley.

SR. RAMOS. Entonces para s. S. nno que por una circunstancia o por otra uomete un asesinato ya es reo para toda su vida?

SR. NEPOMUCENO. (R.) No lo he dicho precisamente.

SR. RAMOS. Porque si admitimos la posibilidad de que ese reo puede regenerarse algun dia, por que vamos a cortarle la vida solamente por una circunstancia y otra?

SR. NEPOMUCENO (R.) es precisamente paa quello reos que no tiene ninguna posibilidad de regenerarse.

SR. RAMOS.Y para esos casos, ?Cual seria, por ejemplo, la circunstancia que S. S . requerir paraque uno puede considrarser reo qye ya nó tiene remidio de regenerarse?

SR. NEPOMUCENO? R. Yo aceptaria la decision unanime de la Corte Suprema.

SR. RAMOS. AUn para el caso en que el delito cometido es parricidio...

SR. NEPOMUCENO. (R.) en el caso que S.S. ha mencionaod, podria informarme S. S. si al llegar el asunto a la Corte Suprema esta confirma la csentencia del juzgado infefior?

SR. RAMOS. Parece que llego, no estoy seguro, porque entonces, no estaba ella, pero la cuestion que se lego a ejercutitar la sentencia y ya no habia remedio feu ahoracdo.

SR. NEPOMUCENO (R). Le he oido a S. S. decir que estaba seguro?

SR. RAMOS. Tiene que llegar si es pena de muerte

SR. NEPOMUCENO. Vive todavia el criminal ? La

ley requiere que un asunto de su naturaleza se eleve a la Corte Suprema; sea era ley desde un principio.

SR. RAMOS. Debe haberse elevado, porque se ejecuto la sentencia. Era yo un chiquillo cuando se ejecuto la sentencia.

SR. NEPOMUCENO. (R.) Con igual razon que cito a su señoria este caso, podira decirle que no hubo unanimidad en la Corte Suprema cuando se dicto la decision y se salvo la vida de aquella persona.

SR. RAMOS. La cuestion es que ha ocurrido ese caso que ya no se pdo remediar y de no haberse impuesto la pena de muerte, aquel individuo estaria viviendo.

SR. NEPOMUCENO. (R.). Lo malo es que S. S. no sabe si llego a la Corte Suprema aquel asunto.

SR. RAMOS. Es inmaterial para el caso, la huestion es quese Suprema el asunto.

SR. RAMOS. Eso ocurrio en aquellos tiempos.

SR. NEPOMUCENO. Durante la revolucion

SR. RAMOS Despues de la revolucion.

EL PRESIDENTE . El tiempo del orador ya ha expirado.

SR. LIM. Sr. Presidente, quisiera cercioraarme de cuantos turnos hay registrados en relacion con ste asunto. Si ho hay mas otro que quiera hablar, voy a cerrar el debate.

MOCION ISIP ES RECHAZADA.

SR. SIP. Sr. Presidente, yo pediria el consentimiento unanime paraque esta cuestion se dictueira despues de que hayamos terminado con el "Bill of Rights." Esta es una custion muy importante.

EL PRESIDENTE. Se ha pedido que la discusion de este asunto se pospusiera para despues de que hayamos terminado co el "Bill of Rightss"

Los que esten conformes con la mocion, que digan sil (Varios Delegados Si). Los que no lo esen, que digan no. (Varios Delegados: N

gados: No.) Division. L^os que esten cnforms, se serviran ponerse de pie. (46 Delegados se levantan.) Los que esten en contra, se serviran hacer lo propio (56 se levantan)

por 46 votos afirmativos contra 65 negativos, se rechaza-la mocion.

MR. CABARROGUIS. I request for a chance tos speak aginst the amendment.

SR. DE GUZMAN (ALEJ.) Sr. Presidente yo pido que se empliema cinco turnos mas ambos lados.

EL PRESIDENTE. Se ha pedido que se amplien los tres turnos a cinco por cada lado.Los que esten conformes que se amplien los turnos a cinco, que digan s . (Varios Sres. Delegados: Si) los que no lo esten que digan No. (Varios Sres. Delegados: No)

VARIOS DELEGADOS. Division.

EL PRESIDENTE. Los que esten a favor de la mocion que tengan la bondad de levantrse. (Cuaranta y siete delegados se levantan. (Los que no lo esten se serviran tambien. (Sesenta y site delegados levantan.

47 votos afirmativos contra sesenta y siete negativos, se deniega la mocion.

SR. LIM. En vista de eso y queriendo cerrar el debate, cedo el floor por ahora al Delegado Cabarroguis.

EL PRESIDENTE. Alguien del Comite de Ponencia va a hacer uso de la palabra?

SR. SOTTO (F.). El Comite de Ponencia pedira a su debido tiempo a que sea reconicido para cerrar el debate.

SR. LIM. No habiendo mas que tres turnos por cada lado, si el Comite de ponencia piensa hablar sobre la cuestion, creo el Sr. Babarroguis, no puede ocupar el floor.

el PRESIDENTE. Que dice el Comite de Ponencia?

EL SR. SOTTO Perfectamente, si hay tiempo el Comite de Ponencia va a cerrar el debate.

MR. CABARROGUIS. Mr. Presidente.

THE PRESIDENT. The gentleman from Nueva Vizcaya has the floor.

SPEECH OF MR. CABARROGUES
AGAINST THE LIM
AMENDMENT

MR. C ABARROGUIS. Mr. President, and gentlemen of the convention: Am going to speak to you not as an attorney buy a mere citizen. I would like to speak to you from my experiencs when I was in Mindanao about the necesity of having a captial punishment in the Philippines. There was a reson given by those who are in fwor of the amendment to he effect that it is biblical that therightto kill does not belong to anybody. This is absolutely to the Bible but I do not see why any one person shuld kill another. For the sake of society it is absolutely nedessary that in the Philippines we shold have capital punishment fr the following feasons: First, we are people are rather easily irritated- for a slight mistake of one man we are likey to kill him but for the presence of captial punishment knowing as we all know that if we are going to punish unresonably we are going tolose our lives through Court 's proceedings. The Bible says also, "tooth for tooth and nail for nail." and it this is true we should admit also that the Bible says no one has got the rightto kill should stand. In one word the biblical reason is out of place beause the bible contradicts itself. Right now we find out that the society is becoming mere complicated and it is likely that in thefuture the Philippines Islands is going to have a grater and mor conflicts in society and civilizatins by the growht of our own civilzion there is every likelihood that crime will multiply. There is no doubt I believe that in the future the act of kidnapping is going to be true in the Philippines as it is true in the United States. The act of

kidnapping is one of the most heneous crimes and I believe that those who are criminallyinclined will have fear because they know that they will not be imposed h capital punishment by the state. Knowing as a criminal man nows that h he is not going to receive a capital punishment he is likely to commit a crime altho with the presence of a capital punishment imposed by our laws I am sure it serves as a strong deterrent agency in the commission of crimes in the future. I heard some reasons adduced in the sense that sometimes the courts erros in handing donw dedisions dXX condeming an innocent person to go to the electric chair. This true but at thesame tiye we must admit that with the judges confirming the decision it is better to believe the decision in the snse that all persons may be found to be innocent in the future. If the courts committeed an error in deciding a case of capital phnishment against one person it is not in the courts. I think it is in the procedural laws. Our procedure should be changed or modified in the sense thath the courts may have more means to find out whet ther a person is guilty or not. If a persons k nows that he is not going to be electrocuted fsr committing a very serous crime in the future and he believes that he may not be punished through an electric chair,I believe this will serve to him as one of the encourggements to commit a crime. I have seen in Mindanao myself,when I was in Mindanao, that the Moros, when they found that they are subjeted to capital punishment, they began to take notice of it. I remember when X Judge Yeager one time in Jolo made a decision of capital punishement imposed upon a moro, the moros began very carsful. Since that time, they began to be afraid to in one way. They stopped committing so much crimes. This law has served as deterrent agency to stop the criminals in Mindanao. The Delegate from Zamboanga has made a very good appeal here stating that capital punishment is absolutely

lutely necessary as deterrant agency for the commission of crimes in Mindanao.

MR. BUSLON. Will te gentleman yield.

THE PRESIDENT. The gentleman mayyield, if he so desires.

MR. CABARROGUIS. It is becaue of your experience in Mindanao that you are now in favor of the retention of cppital punishment?

MR. CABARROGUIS. I favor because experience has been found in Mindanao tha the Moros, since the imposition of the capital punishment to them, the bbegan to be very careful in committing further crimes.

MR. BUSLON.Do I understand that if yusu have not gone to Mindanao and have that experience, you would not favor capital punisheмt now?

MR. CABARROGUIS. I may, or I may not.

MR. BUSLON. Therefore, You want to provide for you want to retain capital punisheмent in our law especially in our Constitution because you want the Moros to be afraid?

MR. CABARROGUIS. It is not that, but that is one source of evil that we are going to curve. We like to stop it whether it takes place in any apart of this country.

MR. BUSLON. Does not the part of [illegible] the theory that you hold presuppose that if tere is no death penalty embodied in Constitution, there will be many criminals in this convention and here would be many criminals because there is no death penalty?

MR. CABARROGUIS. I can not answer that, but it all depends upon the future.

MR. GRAGEDA Mr. President, will the gentleman yield ?

THE PRESIDENT. The gentleman may yield, if he so desires.

MR. CABARROGUIS. Willingly.

MR. GARGEDA. Your honor admitted tht despite the decision

decision of the supreme Court a man may still be innocent. You admitted that.

MR. CABARROGJIS. It is not a total admission.

MR. GRAGEDA. You also suggsted that in order to be sure thta a man is guilty before he is put to death, other means must be paced in our law in order to assure, that a man is guilty before his put in death.

MR. CABARROGUIS. To give the government more chances to fd out whether a man is guilty br not.

MR. GRAGEDA. Will the state the means to give the government more possibility of getting more evidence ?

MR. CABARROGUIS. It is your duty and it is my duty and it is lso the duty f the members of the Legislature in the future to find out that means.

MR. GRAGEDA. That is what I want to find out what means you conceive, for example, so that, even thogh here is capital punishment, we ar sure that if it is embodied at all, we are sure to find out all means.

MR. CABARROGUIS. Well it is your duty as mine, I repeat.

MR. GRAGEDA. JUst now, you can not suggest any means.

MR. CABARROGUIA In the means time, I can not, but capital punishment is a deterrent agecy from commiting crimes.

MR. GRAFILO. Mr. President, will the gentleman yield ?

T E PRESIDENT. The gentleman may yield, if he sodesires.

MR. CABARROGUIS. Willingly.

MR. GARFILO. Is the gentleman from Nueva Vizcaya aware of he fact that one of the theories for punishement is for reform?

MR. CABARROGUIS. For reform.

MR. GRAFILO. And tht if a man is already dead as a result of this capital punishment, the chances of reform are eliminated which is one of the objectives of punishement?

MR. CABARROGUIS. I agree to the gentleman that the one objective of punishment is rform, but to reform a man who has already committed a crime which is heidous to society, I think it is high time tht society should protect itself.

MR. GRAFILO. Do you mean to say that those who recieve capital punishments are naturally born criminals and willhave no more chances of redform ?

MR. CABARROGUIS. I do not know.

MR. GARFILO. What about those culprits who are not naturally born crimnals where the chances for regrom are still present?

MR. CABARROGUIS. I can not tell whether a man is a naturally born criminal; but he fact that he killed, he is a criminal.

MR. GRAFILO. The fact that we can not ell that a person is a naturally born criminal, the benfit of the doubt should be given him.

MR. CABARROGUIS. There is no doubt.The fact that he has killed, he is a criminal.

MR.GRAFILO. So when he kills the chance is that he should be kilad,

MR. CABARROGUIS. So when he kills the chance it is necesary tht he should be killed, becaue he has gone to be a danger to society?

MR. GRAFILO. Speaking for the sake of society, do you think that it would be advantageous for the soeeity if a person, instead of killing him, he shold be placed in some penetentiary and there made to work for something beneficial to society?

MR. CABARROGUIS. I have found it from time to time that prisons are a burdon to the government.

MR. GRAFILO. Is here no procedure in order that they can be made useful?

MR. CABARROGUIS. They may, in some day, be someting useful, but I think they should expiate for he crimes which they have committed.

THE PRESIDENT. The time of the gentleman has expired. The Delegate from Manila (Mr. Lim) has the floor.

MR. VENTURA. Before the gentleman from Manila proceds, will he explain to this convention how will his amendment stay in section 1? Your amendment is follows: No person shall be punished with penaltyof death. That is between No. 1 and the word "no", and then folèws Section 1. How will that stand with section ?

MR. LIM. It willbe a separate paragfaph entirely.

SPEECH BY DELEGATE LIM.

MR. LIM. Mr. Pæesident and Gentleman of the Convention: It is with a great concern that I stand before you this evening to sponsor an amendment,--provision that was originaly proposed and presumably forwarded to the corresponding committee, but entirely ignored in its report to this august body. The amendent reads as follows:

" NO PRSONS SHALL BE PUNISHED FOR THE PENALTY OF DEATH"

The importance of this subject however, comples me over and above factional opinions and divisions to earnestly insist in is adoption, with the hope of seering your approval and assistance.

An essential part of the criminal law is the punishment or sanction by which the stat seeks to prevent of avenge ~~XXXXX~~ offense. But great changes have been made throu throughot the world in the modes of punishing crime, the modemn trend being for a sociological penology.

I have used heword "penalty of death" instead of "capital punishment." as it is universallyy known, in order to distinguished its true nature from the meaning that capital punishment had under the Roman law, according, to

which it means as well as the confiscationof all property and derprivation of all honors, aside from the taking of life- or "summum pupplicium." the specific term, given to the later.

It is netierh my intention to suppres the word "life " from the next provision, inasmuch as such inhibition aginst the derpivaion of life extens to the right of the individual to his body in its completeness, and the use of the God-given faculties which make life enjoyable.

It is my aim to prove briefly ten different propositions,showing he futility and immorality of the capital-punishment as the penalty for any cirme. They are briefly as foloow:

1. The advance of civilization and constant evolution of doctrines of democracy tend to the abolition of this penalty;

2. It lowers the general appreciationof life;

3. It makes the victims into heroes and martyrs

4. It has a bad effect in the institution in which the penalty is infected;

5. It is inconsistent with the general policy that it is being developed for the treatment of offenders;

6. It concentrates emotions on ts evil that is already done rathr than on the removal of the conditions which produced such evil;

7. The state has no rifht to inflict such penalty nor is justified under the conditions prescribed in our laws;

8. It is a social cowardice to maintain such punishment in our law books;

9. It serves no practical purpose; and

10. The penalty is irreparable in case of error.

THE ADVANCE OF CIVILIZATION AND PROGRESS OF DOC

THINES OF DEMOCRACY TEND TO THE ABOLITION OF THIS PENALTY

Historical considerations prove that the capital punishment has prvailed mostly in situations where internal conflicts develps--as whereby military power or another group ~~HHH~~ secured control oa another or where there are makked differnces in political loyalty or in religious beliefs- in periods of great disorganizations. It has also continued t o flourish when the leaders have beem isolated from the rank and file of the population by caste systems.

The use of capital punishment is determinedgeneraly not by the material culture of any group or state, but by the social relations between the individuals of the grup. Where relations are imtimate and thememners are essentialy of the same cutue they have little resorts to this penalty; when there are artificial barriers between clases and when contacts are infrequent and lacking in intimacy, it can be inflicted by said members upon others with little lose of equenimity.

As democracy has spred, however, and human contacts have been faciliated bythe development of means of gojmpunication, there has been general tendencyfor capital punishment to wane. Thus tendency became apparent in different countries at different times.

The laws of Hammurabi (Babylonian Law) provide capital punishment somewhat indiscriminately; even the "lex talionis" of the ancient Hebrews, which proclaimed the law "of a life for a life, an eye for an eye, and a tooth for a tooth," later on adopted by the Romans, represnted an advance in civilization, as inroducing the ida of degree in the law.

We all know of the Draconian laws of Greece. We all know how men like Socrates were executed merely for supressing opinions which were distatesteful to thos in authority.

In Rome the penalty of death was for treason,

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ad ltery, and seduction, murder, corrpution and kidnapping under certain circumstances, abdu ction and rape.

In angle-Saxon times urder was punishable by a fine or bot whereof two thids went to the relatives and one thtrd to the king.

In the 13th century death was, by the common law of England, thenprovided for all felonies (except mayhom and petty larceny). The penalties were so ferocious that the severity of the law was tempered by a rule as to benefit of clergy and by the rigid adherence of the judges (in favorem vitae) to the rules of correct peading and proof, whereby the slighst error on te part of the prpsecution led to an acquittal. The condemned felons were also given the option of transportation (deporation) to the English colonies.

Instead of no less than two hundred capital crimes at the beginning of the 19th century as shoplifting up to five shilings, counterfeiting internal revenue stamps on perfumeryor hair powder, stealing a sheep, cutting down a tree, etc., England has only four : high treason, murder, piracy with tolence, and destructin of royal dockyards.

Since 1832 the death penalty has been exacted under the ordinay law in England only for murder, and the only different case since when ocured in 1917 when Roger Casemen was hanged for high treason.

Although at the time of colonizationm of America no laws than two hundred Crimes, as I have said, where punishable by death, the colonists greatly reduced this numbr only twelve offenses being capital in the New England colonies. Since colonial times there has been a growing distaste for its use, evidenced by somewhat constant reduction in the number of capital offense.

In 1892 a federal law was passed which reduced the number of capital crimes to three namely, treason, murder and rape.

The following countries have abolished tis penalty, Argentime, Austria, Brazil, Colombia, Costa Rica, Ecuador, Holand, Hondruas, Italy, Latvia, Luxemburg, Norway, Panama, Peru, Portugal, Rumania, San Marino, S. o, Domingo, Sweden, Switxerland, Uruguay and Venezuela.

In Belguim, it has been practiseally abandoned, befause since 1863 the king had always granted a reprieve.

The States of Michigan, Kansas Minnesota, Northa nd South Dakota, Tennesseess, Rohode Islands, Wisconsin, Maine and Washington have abolished it. of the thrity-seven which retained it, twelve have limited ti to murder, while the thirty-three states the Court is vested with discetion to impose to the death penaly.

IT LOWERS THE GENERAL APPREACIATION OF LIFE.

The capital punishement is aninjury to society and it is ne of the cruel invention of caste, just a s some of the laws governing it have ben class laws, namely to protect the property owners or the capitalists. We teach people tokill and the State is the ne that teaches them If a State wishes that its citizens respect human life, then Stae should stop killing. If life is sacred enough 5o be prototed from destruction by a personal violence, is it not so csacred tht we shouldmhke it certain that it will not be taken through conspiracy, public prejudice or judicial mistake? Why not go a step further and say that life if so sacred that the state should not take it at all ?

Wpuld not the public sentiment cultivated by Different doctfines be more effective than the present attempt to accent the secredness of life by executing another ? The competion of an exeoution, with the horrors that insepa-

rably accomplish it degrades and brutalizes. It cannotbe ~~others~~ otherwise and the state has no right thus to degrade its people unless it absolutely indisputable that the result sought for cannot be accomplished in any other way. It renders life less sacred, also, by inducint the desire for suicide on the part of the criminal, so that every prisoner under sentence of death is guaded with the greatest care, less he destrys himself and thus et before the community another evidence of disregard of life.

Nature lives life.We believe that life should be protected and preserved. The thing that keep one from Killing is the emotion they have against it, and the greater the sanctity that the state pays to life, the greater the feeling of sanctity the individual has for lifd.

IT MAKES THE VICTIMS INTO HEROES AND MARTYRS

It the party is aimd at criminals thenit is useless, becuse they do not price life highly. Murderers, as a class, are not to be frightened by such a penalty; they are the bravest of their kind. Many of them in committing muder have the courage to risk their own livss. For some persons, the penalty of death has a certain fascination arising ~~out~~ of vain-glory, a characteristic of criminals. Many of them wold readily choose the electric charir, with the suggestion of heroism and martyrdom rather than the panitentiary, which has no other meaning for them than disgrace. Danton, standing before executiner thundering his defianse for all to hear; "you willshow my head to the pepple; it will be woth the display."

IT HAS BAD EFFECT IN THE INSTITUTION IN WHICH THE PENALTY IS INFLICTED

If the interntion of the stare is tht of exemplarity, I just invite you to witness the effect of the execution of a criminal within the constitution where it takes place.

A general depression will be noticed among all the inmate, climaxint thier complete dejection at the appointing hour.

But did the penalty accomplish such purpose? And and No. The homicides and murders that we have been hearing and reading in the press within the every walls of whose institution furnish the best answer.

IT IS INCONSISTENT WITH THE GENERAL POLICY THAT IT IS BEING DEVELOPED FOR THE THREATMENT OF OFFENDERS.

Plato said: Ψ"Everyone who iundergoes punishement, as that punishment be likely inflicted, ought either to be made better thereby and profit by it, or serve as an exampke to the rest of mankind, that others, seeing the sufferings hs endures may be brought by fear to amendment of life."

Bevcaria, the first autority of eminence fo combat capital punishement, denies the right to government to take human lie underany circumstance and maintains that it is less efficacious method of deterring others than the continous example of a living culprit condemned to repair by laboring a slave, the injury he has done to society.

Bentham pointed that certainty of punishment was more effective than severity, that severe phnishment, induced juries to acquit criminals, and that thus the certainlty of punishement was diminished.

Montesquie tells us that it is certainty and not severity which deters-that excessivd severity hinders the execution of laws.

The infliction of this penalty has become so edious even to our own judiciary, whose members have time and again did everything to circumbent the law. About a year ago a prominent judge presiding a court in a neighboring province desproyed into pieces the pen with which he had to sign necessarily the sentnece of these murderers, reimbursing th government for he value of such public property.

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If we ought to get rid of killings by electrocution, why not make a punishment tht is terrible ? This is not so much. It lasts but a short time. There is no physical torture in ti. It lasts but a short time. There is no physical torture it. Why not bil them in oil, as they used to do? Why not crucify and quarter them at the cross-roads? Why not burn them at the stake? Why not sew them tnto a bag with serpent and throw them out to sea? Why not break every bone of their body on the rack, as has been done for such serious offense and heresy and witch-craft?

IT CONCENTRATES EMOTIONS ON THE EVIL THAT IS ALREADY DONE RTHER THAN ON THE REMOVAL OF THECONDITIONS WHICH PRODUCED SUCH EVIL.

The mental state of criminal, produced oftn times by heredity, environment and poverty is so disrupted, in the most of thetimes by drugs and alcohol, and strong passions dminate the mind until tà crime is committed.

But such a state of mind is different one mont afterwards when every reasnf or committing it is gone.

Why remedy then the past and not the presnt ?

Better sociologicanconditis should be emphasized.

THE STATE HAS NO RIGHT TO INFLICT SUCH PENALTY NOR IS IT JUSTIFICED UNDER THE CONDITIONS PRESCRIBED IN OUR LAWS.

The penalty is inflicted upon a certain kind of murderer. In our industrial centers a countless numbers of persons, prish by prevenable accidents; but owners and amnagrs who inflitt this loss of lives are rarely punished in any way.

The despised saloonkeeper who does his customer to death by the slow pocess f constant intoxication is not death with as a major ciriminal, nor the reputable distiller or bwewer exactions were the first ceuse.

The dispoenser of a drug that consumes thewill and fin

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finally the man, is in no danger of the fallows.

And the crimes of th procurer, which destroys happiness and ~~XXXX~~ health and home and soul--which ends in death nd renders it welcome--is notpunshed capitally.

As long as the element of chance or uncertainty about threatened death exists than it losses its terrors.

It was not fear of punishment, but the invention of the steamship that broke up priracy.

We often times hear the phrase "It serves him right!" Hanging was to good for him!" Such sentiments proclaim the savage. Revenge is the lowest of our characteristics This standard has been abandoned even by the most violent and drastic penologists.

IT IS A SOCIAL EOWARDICE TO MAINTAIN SUCH PUNISHMENT IN OUR LAW BOOKS.

Why do we send people to prison? Is it because we want to hurt them? No. We send them in self-defense, because, for some reason they cannot adjust themselves to life. No other rason than thatis adduced and no humnas person believes any other beason is admissible.

In cass of murder, we do not inflict the extreme penalty ofor the crime itself, but for the result. If one discharges a revolver into the breast of another, with the distinct intention of murdering him! and it happens that he man survives, the punishment is limited to imprisonment. If the man dies, the penalty may be death.

Morally the crime is committed when the gun is discharged and to the consistent the sacredness of human life and allother arguments used to justify the death penalty demand that the offender be executed.Yet such is not the law.

We refuse to abolish this penalty in crime which results in death because we fear our lives may be less secure, as though there were no other remedies.

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IT SERVES NO PRACTICAL PURPOSE.

Punishment by the State has three objectives: to restore to the injured, to reform the criminal, to prevent a repetition of the crime.

In murder, it is impossible to restore the injured.

The death penalty prevents the reformation of the crimina , but it des effectively stop repetition.

If, however, repetition can be prevented by imprisonment, electrocution is without an apology.

If we can restrain the hmicideal madman, we ought to be able to cntrol the ordinary murderer.

Is it necessary, as a deterrent to prevent additional murderers, to kill?

Can soceity be more surely protected by treating the offender or be treated in such a way as to prevent from future crimes and develop him as far as possible along the line of good citizenship ?

What kind of men go to the chair ? is it ~~MA~~ true that three out of frour are there for ~~MAAI~~ their first offense ? Is it true that they are one-crime men; or, aret they killers who should be put away by the States for the protection of the community, That can be easily determined.

Is it good that a man who is poor always goes? Is it true that a rich man never goes?

One who has money is able to hire counsel and able to prevnt his case so much better. In any event, try and how men someone who ad money and had gone to chair.

IT IS IRREPARABLE IN CASE OF ERROR.

The opponents may say that a man must be proven guilty first. Does anybody know whether anybody is guilty ? There is a great deal implied in that. For me to do something or for you to do something is one thing; for some other man to do something, quite another. To know what onedeserves, requires infinite study, which no one can give to it. No

one can determine the condition of the brain that did the act. It is out of the question.

From the time of calvary to the present day innocent men have been put to death.

Mittermaier tells us of guiltless persons executied in Italy, France and Germany. He speaks of a condemend man, afterwardsproved innocent, concerning whose case Baron Martin, the trial judge said;

> "The evidence was about the clearest and most direct that, after a long cause of experience in the administration of criminal justice, I have ever know."

Chief Baron Keely says that from 18 02 to 1840 he traced twenty-two men who were wrongly convicted of murder in England, seven of whom were changed; Sir James Mackintosh, for Recorder of Bombay, India, a most conservative man, said that in the same country, taking a long period of time, one innocent man is changed in every three years.

I may add that the thousands who were put to death (at the stake and otherwise) for witchcraft were not guilty of the crimes with which theywere judged.

As I have said, there is no way of ascertaining to a certain thing the guilt of anyone judged with murder.

Felonious intent is the essence of the crime. The Judge must degtermine, then, in its instant, the state of mind of the accused. In many cases this is a difficult task, and in a foew verdict is a mere guess.

A confession if guilt, if voluntary, would seem to be a strong evidenc, but, by way of illustration I would just invite your attention to thenumber of cases in which our Supreme Court had repudiated such confessions.

CONCLUSION

The Laws of the Roman kings and the twelve tables of the decemviri were full of

the decemviri were full of cruel punishments; the porcian law which exempted all citizens from sentence of death, silently abregated them all; in this eperiod of the republic flourished; under the emperors severe punishements were fevived; and the empire fell.

I am against capital punishemmnt becaus I belive that ih is human, becaue, I believe that as the heart of men had softened, they have gradually gotten rid of brutal punishment, because I believe that it will only be a few years until it will be banished forever from every civilized country.

Japna, I understand is about to abolish caital punishment from its domain. Or country pretends to be the most Christain nation in the Far East. Why should not we imitate the example, thus placing ourselvs as the vanguard of civilization and democracy on this side of the world ?

One who likes to see sufferings, out of what he thinks is righteus indigantion or any other cause will hold fast to capital punishment. O^Ne who has sympathy, imagination, kindness and understanding will hate and detest it as he hates and detest a violent death.

Mercy is the most human and most dignifying of all virtues.

SR. ISIP. Para algunas prguntas aa orador.

EL PRESIDENTE. El orador puede contestar, sile place.

SR. LIM? Si, señor.

SR. YSIP. Podria decirnos S. S. el existe otro cantigo mas cruel, inequitativ o a inicuo que la pena capital?

SR. LIM. La cadana pertua, es mas curel para mi que la pena de muerte y podria arredrar al asisino.

SR. YSIP. Quiere decir que no concerada S. S. con la teoria de que la imposicion de la ena capitaa es mas cruel, en

curel, es mas inicua que la de cadena perpetua ?

SR. LIM. Yo la llemaria mas bien inuusta y mas aun, injustificada.

SR. YSIP. Bien, entonces, como compaginaria S. S. esta seccion del Bill of rights, donde dice que no se impendran umultas excesivas ni se infligiran castigos crueles e inusitados, si no abolimos la pena capital.

SR. LIM. Si no se apmueba una disposicion constitucional expresa aboliendo la pena capital, segunla interpretacion del Tribunal Federalk, la pena de muete no esta en pugna con la dis posicion que su señoria acaba de leer, asi es que es praciso que nosotros hagamos una declaracion expresa de que la pena de muerte no debe ser impuesta sobre ningun acusado.

SR. YSIP. Segun tengo entendido, la necesidad de la imposicion de la pena capital es con el objeto de proteger a la sociedad de estos meinbros malsanos, como dirismos. ?no es eso? Bien; ?no es asimismo necesario para lo proteccion de la sociedad no solamenem sus personas sino tambien en sus propios vidad, wue por ejemplo, los enfermos tuberculosos, los enfermos del mal de Lazaro, ?no cree S. S. que estos enfermos afrecen mayor peligro a la sociedad que un criminal que haya matado a una persona?

SR. LIM. Indudabelmente, teniendo en cuenta lo conta-giosas que son esas enformedades. Si hemos de seguir la teoria del Estado al imponer la pena de muete a los acusados, tambien debemos matar a estos enfoermos; pero segun las teorias modernas sostenidas por eminentes penolgos co o Ferry y otros, y segun la sociologia penal moderna, no debe imponerse la pena de muerte.

SR. YSIP. Lo que yo quiero conoluri se que no habiendo el Estado tenido necesidad de eliminar de la sociedad a estos enfermos contagiosos de la tuberculusis y del mal de lazaro, que pone mayor peligroso [illegible] a la sociedad, ? porque abolijos la

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pena capital que se menos peligroso para la sociedad ?

SR. LIM. Agradezco la oportunidad que me ofrece, los datos que me da S. S. para argumentar...

SR. PRSDIDENTE Ha expirado el tiempo del delegados.

SR. PERFECTO. Antes de que se proceda a la votacion de la enmienda del Sr. Lim, pid e que se lea la enmienda de los delegados ortega y otros que aparece en la pagina 10 que es de lamismao indole, para evitar repeticiones.

EL PRESIDENTE. Lease la enmienda.

SR. SECRETARIO. En la pagina 6-a, desues lineas 2, despues de la palabra "inusiatados." se inserte lo siguinete : "tampoco se impondra la ena de muerte, pues todad pena justa tie e por objeto la enmienda o correccion del culpable.

EL PRESIDENTE. ?Cual es la enmienda a la enmienda?

MR. CONFESOR. After thew word "There," add the following : "except in case of high treason," so that the amdnemtn shall read as follows: "No person shall be punished with the penalty of death, except in cases of high treason."

EL PRESIDENTE. ? Que dice el autor de la enmienda ?

EL SR. LIM. No adoptamos la enmenda, perque es un crimen, un delito politico yh habria jenos justificacionpara la imposicion de la pena de muerte en estos casos.

SR. CONFESOR. Por ejembo, un ciudadano comete una tradicion contra la patria ?no merece ese ciudadano la pena de muete?

SR. LIM. Hay otra menera de castigar la culpable. ademas de la pena de muerte.

SR. CONFESOR. Para mi es la major ppna.

SR.LIM. Se le pdra deportar o desterrar a otro pais como castigo.

SR. CONFESOR. Pero a un ciudadano traidor se le debe quitar la vida inmediatamente.

SR. LIM. ? Quien lo justifica de que es traidor?

EL SR. CONFESOR. Los juzgados.

EL PRESIDENTE. El caballero por Iloilo desea arguir a favor de su enmienda a la enmienda?

SPEECH OF MR. CONFSOR EN FAVOR OF THE AMENDMENT

MR. CONFESOR. I would speak just for five minutes. Mr. President, I agree with the gentlemen from Manila (Mr. Lim) thar the death penalty should be abolshed. At the same time, however, there are cases that the impesition of the death penalty is necessary; for example, incase of invesion. Any one of the armed forces of the Philippines shold reveal secrets to the enemy. Well, that citizen does not deserves any consideration. He hould be eliminated. If any citizen or employee of the civil government, for example, shold favilitate informtion to any country and such information would serve to defeat this country in war with that other country, do you believe that such a citizen is deserving Filipino citizenship. No. And what should we do with him. We should kill him.

RECHAZAMIENTO DE LA ENMIENDA A LA ENMIENDA

EL PRESIDENTE. ?Esta dispuesta la Asamblea a votar sobre la enmienda a la enmienda? (Una mayoria: Si.)

Los que esten confromes con ela, quedigan si. (Varios Sres. Delegados: Si.) Los que no lo esten, que digan no. (Varios Sres. Delegados: NO). Hay una mayoria en contra de la enmienda a la enmienda. Queda rechazada.

DESAPROBACION DE LA ENMIENDA LIM

SR. LIM. Pido que se vote mi enmienda y que la votacion sea nominal.

EL PRESIDENTE. La Mesa desea saber si hay una cuarta parte de los delegados que apoye a mocion. (Varios Sres. Delegados se pone de pie.) La Mesa decide que no hay una cuarta parte, lo y lo tanto no ha lugar a la peticion.

Se va votar la enmienda del delegado lim Los que esten conformes con ella, que digan si. (Varios Sres. Delegados: NO.)

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Hay una maryoia en contra. Quda desaprobada le enmienda.

Lease otra enmienda.

MR. PEREZ (J.). BEfore proceeding with the rest of the amendment, I would like to ask from the Cahri to inform the convention that the Spanish traslation of the words "guarantee" and "Due process of alw" do not express the same meaning as that embodied in the English version. This is very fundamental, Mr. President.

THE PRESIDENT. That is subject to the committee on style.-----

ELease la segunda enmienda del delegdo Montinola en la Pagina 3, linea 4...

EL SECRETARIO. En la linea 4...

Pagina 3-A, despues de la palabra "leal" insertense las siguientes "restinja las prerrogativas o inmunidades de los ciudadnos Filipinos."

EL PRESIENTE. Tiene la palabfa el Delegado por Iloiolo, Sr. Montinolaa

EN SR. MONTINOL A RETIRA SU ENMIENDA.

SR. MONTINOLA. S^{E}. Presidente, en vista de la explicacion que ha dado el sub comite de siete,no insisto en esta enmienda, por lo tanto lo retiro.

EL PRESIDENTE. Por retirada.

Otra enmienda.

SECRETARION By Delegate Araneta dnd others:

Page 3, lines 2 to 5, strike out the whole parahraph appearing after the wodrs "section 1" and insert in lieu therefo the following paragraphs: " No person shall be derpived of his life nor imprisoned, unless in conformity with a reasonable law and by order of a competent cort of justoce decreed after reasonable procedure and hearing prescirbed by law.

"No public officer shall curtail in any way the liberties and rights of an individual nor deprive him of his property unless in conformity with the reasonable law and procedure.

"No law shall be enacted with unreasonably descrimirates agansts a class of person."

EL PRESIDENTE. Que dice el comite?

SR. SOTTO. El comite no acepta la enmienda.

EL PRESIDENTE. Tienen la palabra el Delegado por Mainila, Sr. Araneta.

EL SR. ARANETA RAZONA SU ENMIENDA.

SR. ARANETA. Sr. Presidente, quisiera hacer constar primaramente que cuando presentamos la enmienda, no hemos presentado estos tres parrafos como una sola enmienda, sino como dos enmiendas; es decir, nosotros proponemos que se entienda como una sola enmienda los dos primeros parrafos y el ultimo paraffo como una enmienda aparte.

La enmienda que yo quisiera someter a vuestra consideracion esta compuesta de dos parrafos, y es como sigue : la palabra "the" debe omitirse. El tercer aparrafo no es objeto de esta enmenda.

Sr. Presidente: Ahora probablemente se acortara mucho el debate si se me permite hacer dos preguntos al Comite de Ponencias en realcion con el sighificado que dan al proyecto sometido sobre "due process of law."

EL PRESIDENTE: Tiene la palabra el Presidente del Comite de Ponencias.

SR. SOTTO (F.). El Delegado Laurel es el "spokesman" sobre esta materia.

SR. ARANETA. Mi pregunta al comite de Siete es la siguiente: ? Se puede sabe r si bajo lla clausula "due process of law" insertada en el proyecto, queda garantizado el principio enunciado en la constitucion de Malolos que dice que ningun Filipino podra ser preso sino en virtud de mandamiento de juez competente."

SR. LAUREL. That is guaranteed in the present draft.

SR. ARANETA. ?Quiere decir su Señoria que bajo el proyecto que tenemos delante seria anticonstitucional cualquiera ley que trata de regular o prescribir un procedimiento que no sea judicial sobre la imposicion de alguna pena?

EL SR. LAUREL.

SR. LAUREL. Mr. President, It would take the time of this convention if we shold attempt to explain the meaning of due process of law, because it is a foregone conclusion...

MR. ARANETA. I want to find out your conclusion.

MR. LAUREL. Due Process of law, Mt. President, does not necessarily mean judicial proceeding.

SR. ARANETA. De tal modo que queda garantizado el principio qus aparece en la constitucion de malolos que prohibe terminantemente el que ningun Filipino pueda ser preso sino en virtud de mandamiento de juez competente, de tal modo que retira su primera contestacion.

SR. LAUREL. That is guranteed. As I have said, no person shall be deprived of his life, liberty and property without dus process of law, meaning, that before a person may be sent to jail, the court or tribunal clothed with power to hear and determine the matter brought before it, must hear his case and he is given the oppotunitytc defend itself.

SR. ARANETA. But the Constitucion of Malolos says : "Ningun Filipino podra ser prese sino en virtud de mandameihto de juez competante," excluyendo por tanto, lls ordenes de tribunales, the comites o de funcionarios publicos que no sean judiciales?

el SR. LAUREL. Under our draft, we have a fr broader expression for that urpose. It has a far broader expression so that I believe tht, the draft we are producingnhw is much btter than the Malolos Constitution, with my due respet to the same.

SR. ARANETA. Creo que no se ha contestado mi pregunta. Mi pregunta se limita a los siguiente: ?Bajo la constitucion de Malolos serak anticonstitucional, mulo, el que la Legislatura trate de imponer un procedimiento en virtud del cual se ueda enviar a la carcel a una persona, a mens que sea previo mandamentio de juez competente. Ajora bien, pre

pregunto yo: sucederia lo mismo bajo el proyecto que tenemos en discusion, es decir, seria anticonstitucional alguna ley que crea un procedimiento en virtud del cual se pueda enviar a la carcel a unapersona o condenarla por un delito, a menos que sea en virtud de un proceso judicial? Los unico que deseo y pido es una constestacin categorica, si o no.

SR. LAUREL. Not necessarily, because, you have, for instance, the contempt of the Legislature. If a person s guilty of conetmpt of the Legislature, the Legislature may, in the interst of self-preservation, exercise that right and the order of the Legislature in that case is the exercise of due process of law, without resorting to take the matter of ~~MEM~~ a competent judicial authority, this same power we have provided in this draft.

SR. ARANETA. Agrdezco la informacion.

SR. LAUREL. There are many exceptions, and as I have sadi, I wish we have ample time to explain the emaning of due process of law. Right now in the administrative investigatin condcted by the Bureau of Customs, we are depriving many people of heir riht to enter but they are detained at the Farola by simple administrative investigation conductedb by the Bureau of Customs. And itha been held, time and agains, that the administrative investigation enducted by the Bureau of Customs is a compliance to what is alled due process of law. The term does not refer to the judicial procedings;,it refers to any form of proceding prescribed by law so that a person may not de deprived of an opportunity to be heard and a chance for a person to defend himself.

SR. ARANETA. La ultima excepcion que ha mencionado el compañero no se refiere pracisamente al caso que suscitado, porque el cao suscitado hace unicamente referencia a caos en que se trata de envir a la carcel a una persona, o sea, usando de las palabras de la constitucion de Malolos, ningun filipino podra ser preso sino en v

filipino podra ser preso sino en virtud dde mandamiento de juez competente...Es todos la informacion que yo queria. si la Mesa me permite, voy a razon la enmienda.

Un milion de gracias, S_. Delegado pr Batangas.

señor Presidente: ustedes creeran que soy un presumido al tratar de querer enmendar la definicion respecto a la frase "due process of law," debido proceso de ley. No tengo el menor propositio de consumir el tiempo de esta convencion nide imponer mis ideas a este Honorable cuerpo.Que quiero unicamente,si es posible, dilucidar el significado, el a lcance de estas palabras "debido proceso de ley." En primer lugar, convengo con el compañero, Sr. Laurel, que la frase "debido proceso de ley" es muy amplia, es muy elastica. No la c critico por ser amplia ni por ser elastica. Soy el primero en comprende que la consticucion no es un dodigo: la constitucion debe fijar normas fundamtales; pero disiento del compañero al decir que a frase "debido proceso de ley" tiene un significado bien conocido y que no se presta a dudas ni a confusions. Creo, con toda sinceridad, que ha legado el tiempo de que esta convencion despues de un estudio sereno de la histria de esta frase "debido proceso de ley," trata de darle una nueva articulacion, de tal modo que pueda ser comprendida no solamte por los abogados, por los miembros de esta constituyente sino hasta por el pueblo. Preguntar el pueblo que significa la frase "degio proceso de ley," y yo quiero ver que contestacion dara el pueblo a esa pregunta.

señores; se ha dicho que una de las condiciones mat importantes a que debe responder una constitucion es su claridad. Una constitucion debe ser clara; si hay una disposicion si ha un articulado que debe reunir este requisito es el articulo que se refiere a los derechos inalienables del ciudadano. Asi es que yo invito a esta constituyente que redacte los articulos referentes a los derchos inalienablesdel

individuo en una forma llana y sencilla que cualquier graduado del high school pueda comprenderlo.

La enmienda que he propuesto no es final, no es definitiva; la podeis mejorar. Estoy seguro que con la discusion que engamos en esta asamblea, podreis sugjerir algunas enmiendas en gracias a mayor claridad. Yo la he sometido con el unicio objeto de suscitar una discusion.

Vosotros notareis que la en mienda que suscitamos de compone de dos parrafos: el primero, debido proceso de ley con respecto a la vida o libertad fisica o propiedad, para ser mas claro, trato de definir enque forma el Gobierno puede privar al ciudadno de la vida, de la libertad o de la propiedad, y enviarlo a la carcel; el seguduo parrfo trata...

SR. KAPUNAN. Para algunas preguntas al orador, señor Presidente.

EL PRESIDENTE. Puede contestar el orador, si lo desea.

SR. ARANETA. Si el compañero me permite profiero terminar antes con mi discurso y despues lo contestare.

(Prosiguiendo) Empero preguntando al distinguido Delegado por Batanga (Sr. Laurl) si bajo el proyecto que tenemos en discusion en puede enviar a la carcel a una persona, y el Sr. Laurel me ha contestado que puede enviarse y cito como excepcion el caso de desacto ante un comite de la Legislatura o a la Legisalatura, le pregunte por otra excepcion y cito el caso de inmigracion. El caso de inmigracion no creo que era responsiva a la pregunta por cuanto que yo preguntaba que otra excepcion existe para poder enviar a una persona a la carcel. no detenerle al entrar aqui en Filipinas sino enviarle a la carcel por desacato sin mandamiento judicial competente. Pues bien; esto es lo que quiero suscitar para saber el alcance, al menos con esta discusion ya adelantamos algo. Ya sabemos que bajo el proyecto en cuestion, bajo la frase "debido proceso de ley" no seria anticonstitucional el que un comite de la Legis-

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latura condene a una persona y le envie a à carcel. No trato de imponer mis puntos de vista personal; quiero solamente cuestiones para mi fundamentales. ?Que cree la Asamblea sobre esta cuestion? ?Cree la asamblea quees prudente, que es conveninte que la Legislatura pueda enviar a la carcel una perna bajo la excusa que ha desacatado las altas prerrogativas de la Legislatura? No, trato de contestar esta pregunta, no hago mas que suscitar la cuestion.

En mi humilde opinion, no cree que cometeriamos un error si damos a la vida y libertad fisica la mayor proteccin posible; y si nos inspiramos en la constitucin de Malolos y adoptamos el principio adoptado en la constitucion de Malolos al efecto de que ningun filipino , de que ninguna persona podra ser preso sino en vitud o un mandamiento judicial competnete. Compañeros, he estudiado detenidamente el alcance de esta frase. El distinguido Delegado, S. Laurel, dijo aqui que nada nuevo hay bajo el sol; esto es ceirto. No trato de decir que he descubierto algo nuevo: nada de ese. Aqui el Delegado, S". Laurel, nos dijo que a declaracion de derechos que aparece en la constitucion Americana no ha enunciado un principio nuevo y que no es mas que una copia de la declarcion de derechos inglesa constnida en el Bill of Rights, es cierto eso, pero, sebras, digamenustedes si no es cierto que la constitucionuente americana al tratar de definir la frase "due process of law" no se dejo guiar por la antigua constitucion inglesa, sino que la mejoro.A, antiguo principio tal como estaba contendo en el Bill of Rights ingles, decia lo siguiente: "No man (Intercede)

Esta es la frase queconservron los ingleses hace muchos años, corren los años y se necesaria quna constitucin federal ? y que hace america? Copiar acaso el procepepto constitucional inlges? No, señor, traro, de mejorarlo! ?Como lo mejoro? Pode mas o menos ustedes lo saben. Eso

es lo que dicen los Amcricanos trataron de mejorar la fraseologia inglesa, ¶Y que interpertacion ha meracido estas palabras contenidas en a consitucion americana? S˘ se si ustedes se sorprenderan si les digo que los tribunales, durante el trascurso de estos años, han dado interpretaciones contrarias. ¯a primera dada por los tribunales es sencialla mente lo siguiente: "Ninguna persona sera privada, de su libertad y de su propiedd, an menos que sea de conformidad- con la ley." La ley podra ser arbitraria tanto en su orden procesal como en su orden sustantivo...y los tribunales no pued pueden dar ninguna remedio. La ley era suprema y los tribuanles no se inmiscuyen a determinar si esa ley es arbitraria o irrazonable. Tengo decisiones de tribunales sobre ese particular. Mas tarde se de a esas palabras debido proceso de ley, en el sentido de que quisieron decir un procedimiento de conformidad con el common law, es decir, que no se podria privar a unapersona de su vda, de su libertad y de supropiedad, a menos que sea con el prodédiente conocido en el common law. Otrasp personas ensanchan esa interpretacion y dicen procedimiento en que descanso la constitucion; de ahí que otros tribunales aun lo ansanchan mas y dicen que se procedimitno razonable. Los tribunáles, siguiendo lo que el Sr. Laurel ha sostenido sobre el judicial statesmanship, en uso de esa prerrogativa, inclusive dan a esa palabra dan a esa palabra una interpretacion mas amplia. Y cual es esa palabra una interpretacionmas ampia. Y cual os esa interpretacion mas amplia? pues, la ley razonable, tanto en su orden sustantivo como en su rden procesal. Hoy dia ceo que la palabra debido proceso de la esta conformescon lo razonable, tanto en su orden sustantivo como en su orden rocesal. No os voy a truer citas; solamente citare algunas autoridades y les dire que antes deque los tribunales francamente, dijeran que la palabra debido proceso de ley queria decir ley razonable, hubo grandes magistrados de la Core Supema Federal que se atrevieran a declaMaciaX rar anticonsitucional vria leyes, bajo eh fundamento de que

48 esas leyes eran contrarias a los derechos inalinables del ciu-
dadano. Despues se dio a las palabras due process of law
sta interpretacion; ley razonable tanto en su orden procesal
como en su orden sustantvo. De alli que un autor, escriiendo
en el columbian Journal of Law, dijo:

In fact,tje modern definition

(Insertese)

Esto parece que causa sorpesa. Pro, seria posible
que demos a lostribunals sea facultad de determinar si una
ley es razonable o no? Vamos a ver que dijo nuestro Tribunal
supremo. Nuestro Tribunal supremo en filipinas, hablando por
boca del Magistrado Johnson hace muchoas aÑs, en el asunto de
Lim su Fan, definio las palabras due process of law. Esto
aquivale a proceder con arreglo a la ley del pais; es una
hurencia de aquellas teorias antiguas, de que due process of
law es igual a law of the land, y esto es sencillamente
begging the question. Dice:

"Debido proceso de ley

(Insertese)

Esto, por un lado; por otro, en cuanto al procedimiento raso-
nable, cual es un procedimiento razonalges? Desde luego que es
distinto, si se trata de a vida y de la libertad fisica, y
distinto se se tra de la propiedad y de los otros derechos.
De aqui que no he creido necsario y conveniente sugerir que
esta disposicion sea re-articulada en dos parrafos. El primer
parrafo trata de definir lo que es un procedimiento rzaonable,
en relacin con la vida hy la libertad fisica, y el segundo
parrafo hace referecia a todos los derechos en general, in-
cluyendo los derechos anejos a la propiedad. Y aora, me per-
mitiran ustedes a que lea la enmienda, que dice asi: Ninguna
persona sera privada de su vida ni reducida a prision. Con
esto, no quiero referirme el case de inmigracion suscitado por
el Dr. Laurel, porque no creo se quiera decir que el in-
migrante que esta dentro de la Parola esta en presidio; pero

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si me refiero a la primera acepcion suscitada por el Dr. Laurel, al decir que on comite Legislativo puede enviar a la carcel a una persona. Y me opongo a eso. Ninguna persona sera privada de su vida ni rodicida a prision sino de conformidad con una ley razonable. Y ahora viene la parte procesal, y por orden de un tribunal competente; es decir, debe haber un mandamiento judicial, no debe dictarla un funcionario administrative nilegislativo; de be haber un prodedimiento judicial decretado despues de una audiencia, prescrita por le ley.

Algunos se quedan de que se repita la palabra "razonable." No insisto en la fraseologia, tal como esta. Tal vez se pueda buscar la formade evitar esas repeticiones de la palabra "razonable;" pero esa es la idea. Que la ley ha de ser razonalbe en su orden sustntivo y en su orden procesal. Para que sea razonagle en su orden procesal, la orden ha de estar dictada por un tribunal competente. Aun mas; dira que hay otras excepciones; proque insito yo enque ha de haber un mandamiento judicial para que se pueda enviar a la egreel a um persona? porque aixsten decisiones del Tribunal supremo Federal que an declarado vilida y constitucional una ley qua prescribe un procedimiento en virtud del cual se puede enviar a una persona a la carcel sin nefesidad de un mandamiento del juez o tribunal competente. Se trataba de una ley envirtud de la cual un funcionario publico que maneja fondos publicos puede ser administrativamente declarado culpable del delito de malversacion, condenado a presidio y dministrativamente sus benes podrian ser embargados. El tribunal Supremo Federal declarò constitucional es ley, porque dice que ese era un procedimiento conocido en America cuado se aprobo la constitucion. Ese es el caso de Murray vs. Jacob Ben, 16a222. Esta la constituyente dispuesta a aprobar ese procedimiento? El que unfuncionario publico que ha manejado fondos pueda ser criminalmentedeclarado culpable por malversacion

sacion de fondos por un funcionario administrativo y puede ser enviado a la carcel? Si ustedes no estais conformes con ese procedimiento, hay necesidad de enmendar la definicion del due process of law, segun mi humilde entender.

Pasando ahora al segundo parrafo, me limito a decir lo siguiente: ningun funcionario publico menmara enmodo alguno las libertades y derechos de una persona, nni privara de su propiedad sino de conformidad con una ley y procedimientos razonables; es decir, la ley ha de ser razonable tanto en su orden procesal como en su orden sustantivo, y aqui ya no se exige taxativamente, que es necesario una orden de juez competente.

Sres. ustedes se sorpenderan si les digo que en este asunto de los Estados Unidos vs._____ el tribunal Supremo de los Estaodos Ugidos dijo lo siguiente "siempre que se trate de a vida, de la libertad o hacienda, debe haber, en todo caso, procedimeinto judicial. ?En que quedamos? El Sr. Laurel ha dicho que no es necesario esto, mientras que el Tribunal Supremo de los Estados Unidos dice que es necesario. Por eso digo que hace falta una redefinicion. Creo que ha legado la hora de redefinir. Voy a continuar leyendo: "Requisito este que supne o implica una acusacion por escrito, audiencia en un Tribunal competnete, una oportnidad de defenderse y una condena o sentencia antes de que se pueda imponer castigo alguno, provando a alguien de sus vida de su libertad o hacienda."

Segun esta palabra del Tribunal supremo no se puede privar a una persona de su proiedad sin una orden de un tribunal competente, y eso es un absurdo. Sabemos que a diario, el Colector de Rentas Internas esta imponeido multas administrativas sin ninguna orden de juez competente.

Cito esto, mopara criticar al Tribunal Supremo, sino nada mas que para demostar que es tal el cumulo de cojfucion en la jurisdiction, debido a que el mismo Tribunal

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Supremo ha estado dando a estas palabras, distintas interpretaciones en diferentas epocs, y es necesario que esta convencion estudie con seriedad, sin el menor deseo de que queremos enmendar la palaba, a los Estados Unidos, no, sino con el unicopropositio de redefinir esto. ?Seria mal mirado o criticado en America, si adoptasemos esta ectitud? Creo que no. Señores, usteds saben muy bien que actualmente un grupo de eminentes juristas americanos esta tratando de crear un cuerpo de ley queellos llaman estan tratando de redefinir la ley, y ya hanipublicddo un "reinstatement of the Law of contract."....

?Y por que? ? por que se han metido a realizar este trabajo tan improbo? Un escitor americano, en relacion con este particular, dice lo siguiente.

(Inserte)

Es tal de confusion que reina en la jurisprudencia americana, que los mismos americanos de han asustado de su obra,y quieren encauzarla por un sistema mas claro, logico y sencillo. Es todo.

EL PRESIDENTE. La Mesa advierte al orador que ya no le quedan mas quecincominutes de tiempo.

SR.OZAMIS. Para alguas peguntas al orador.

EL PRESIDENTE. El orador puede contestar si le place.

SR. ARANETA. Si, señor.

SR. OZAMIS. ?Le bastaria a S. S. que una ley fuera razonable, con toque estuviera esa ley de donformidad con la constitucion?

SR. ARANETA. Bien; La constitucion no fija mas que principios generles. Tan es ai que el Tribunal Supremo en America se vio en la necesidad de declarar anticonstitucional leyes que no infringian ninguna disposicion de la constitucion, despues de decir que era anticonstitucional dijeron que era contrrio a la ley natural. Mas tade, dijeron: vamos a ajustarnos a una disposicion de la consti-

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tucion ?y que hicieron? Dieron a las palabras "debido proceso de ley" un sentido amplio, diciendo que esas palabras quieren decir, ley razonable, tnto en su orden procesal como en su orden sustantivo. Si ustedes quieren ponerlo en un lenguaje mas restringido, se podria decir una ley que no fuesa arbitraria, tnato en su orden procesal como sustantia. Si he usado la palabra razonable, ha sido porque fue esa la palabra por el tribunal Supremo de los Estados Unidos.

SR. OZAMIS. ? No sería muy peligroso dejar a los tribunales el determinar si una ley es razonable? Un tribunal podria opinar que una ley es razonalbe aunque estuviera en pugna con algun precepto constitucional.

SR. ARANETA. No vengo a discutir, lo que he hecho es unicametne tratarde insetar en la fraseologia del proyecto la interpretacion adoptada ultimamente por America.Ahora, si esa interpretacion que ha sido adoptada por America esa mal o esta bien, discutamosla. Precisamente por eso suscito esta cuestion, porque quiero que haya una definicion clara de la voluntad de esta convencion sobre esta cuestion tan fundamental. Yo no vengo vengo aqui a defender la ctitud del Tribunal Supremo de los Estaed s Unidos. Quiero decir solamente queesa es la actitud de America, y que si aprobamos el proyecto tal como se nos recomienda por el Comite eso sera el significado que tendria, y no quisiera que esta Convencion firme en barbecho este cocumento y diga despues "hombre, esa no era mi intecion."

SR. OZAMIS. Pero hasta ahora, por lo menos, las palabras "el dabido proceso de ley" se haaplicado a leyes que se han considerado que estan dentro de la constitucion y no podria ponerse a una persona pusa ni embargarsele sus propiedades o su hacienda mediante una ley que se declare anticonstitucional.

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SR. ARANETA. Las famosas disidencias del Magistrado Holmes se basan en eso, que mientras sus compañeros declaraban irrezonables la aleyes del Congreso y las declaraña anticonstitucinal , el Magistrado Homes disentia , y decia que el Tribunal Supremo de los Estaods Unidos no tenia derecho a declarar irrazonable una ley presentada y probada por el Poder Legislativo de los Estados Unidos. En ese consiten precisamente las famosas disidencias del Magistrdo Homes, y veo que S. S. es undiscipulo del Magistrado Homes.

SR.OZAMIS. Si no he comprendido mal su discurso, parece que S. S. abega ppr que solamente los tribunales de justica sean los que puedan privar a las personas de la libertad, de su haciendo ó derechos.

SR. ARANETA. No,no,al contrario, precisamente pr eso, en la reparticulacion de este precepto he cincluido dos parrafos o dos sentiosas. La primera haxe referencia unicamente a la vida o libertad fisica o su imprisonod. Para enviar au una persona a la carcel es necesario un provedimiento judicial. En los demas casos,no no hay necesidad de una orden judicial para privar a una persona de la propiedad.

SR. OZAMIS. Entonces, ?a que ha vendo el ejemplo puesto por S. S. del colector de Rentas internas que impone multas? Como una critica a este procedimiento quando puede quitarse a un divididuo parte de su haciendo sin proceso judicial.

Sr. ARANETA. Aquello lo dije despues de haber leido una parte de la sentencia del Tribunal supremo de Filipinas quedice lo siguiente: "Siempre que se trata de la vida, de la libertad o hacienda, debe haber, en todo caso, procedimiento judicial," y despues dije qe el colector de Rentas Internas diariamete esá imponeiñdo multas administrativas, demostrado con ello que aunla misma corte Sup-

rema ha definido las palabras "debido proceso de ley" en una forma erronea.

SR. OZAMIS. ?No es verdad que esa multa administrativas impetas por el Colector de Rentas Internas se hacen unicamente mediante el consentimiento del Individuo, pues si je se aviene a trasigurel individuo...

SR. ARANETA. No, la multas administrativas se imponen aun sin la conformidad del individuo.

SR. OZAMIS. Pero el individuo que se reiste podria llevar el asunto al juzgado, y este pude pasar pr encima de esa decision.

SR. ARANETA. El Colector de Rentas iInternas puede embargar su propiedad sin intervencion judicial

SR. OZAMIS. Pues mi no insisto.

ARANETA. Si insiste seria responsable por resistencia a la Autoridad.

SR.OZAMIS. No nos se poda cuestionar esa accion del Colector de Rentas Interna para ver si es razonable y constitucional dicha accion.

SR. ARANETA. Creo que no es asi.

SR.OZAMIS. ?NO se pdria cuestionar eso en los juzgados?

SR. ARANETA. Pero de hecho el Colector de Rentas Internas lle impone a uno la multa administrativa y le quita a uno su propiedad, y si uno quiere defndr su propiedad con un cañon o con un fusil, escorreria el riesgo de ser condenado por infraccion del Codigo Penal.

SR.OZAMIS. Se podria cuestinar la accion del Colector de Rentas Internas, se una accion que esta dentro de la constitucion y no mediante una accion de interdicto prohibitorio.

SR. ARANETA. ?Podria pregunta S. S. para contestar a su pregunta? Usted cre que bajo la constitucion actual puede hacerse esto?

SR. OZAMIS. No, se pede tomar una accionmediante

interdicto prohibitorio para que se declare constitucional una accion?

SR. ARANETA. No se cabe.

SR. OZAMIS. Ya lo creo que si.

EL PRESIDENTE. El tiempo del Delegado por Manila ha expirado. Tiene la palabra el Delegado por Batangas.

MR. LAUREL. Mr. President and Gentlemen of the Convention: Qualified for sentimental reasons, and because of my great admiration for the Delegate from Manila, I have always been inclined to receive his views with a great deal of respect, specially when he made reference to the Constitution of Malolos. But I submit to your consideration that the amendment proposed by the distinguised delegate from Manila is entirely unacceptable. First, in regard to the reasonable of the law, and to the reasonable procedure. I want to say that the question of reasonableness is not for the court to determine. The question of justice, the question of expediency of wisdom, of advisability of legislation, in other words, the question of reasonableness is primarily a legislative question. It is a question for the courts to determine, nd if courts constituting an independent department of the government set aside laws, they do so not because primerily the law is unreasonable, but because they find that law is unreasonable, and repugnant to the fundamental law, which is the sworn duty of the courts to uphold, the supremacy and majesty of that law.

SR. ARANETA. Puedo hacer una interrupcion al Delegado? No he dicho eso, al contrario, He dicho que bajo la ley organica actual se puede hacer eso ahora y no es necesario un procedimiento judicial bajo la ley organica actual. Lo que he hecho es acatar la decision del Tribunal Supremo en donde dice que no se puede hacer eso sin proceso judicial.

SR. ORENSE. Para unas preguntas al orador.

EL PRESIDENTE. El orador puede contestar, si le place.

SR. LAUREL. Si, señor.

SR. ORENSE. Dando por supuesta la supresion de la palabra "reasonable", no cree vuestra señoria que actualmente, en la vida practica las palabras due process of law" nos tiene divididos a todos los abogados, y n cada caso se sostienen diferentes teorias, en vista precisamente de la generàlidad y amplitud con qe se anuncia esta frase?

SR. LAUREL. Es verdad, Sr. Presidente, que no solamente segun unos autores, sino tambien segun algunos tribunales de justicia la frase debido proceso legal es muy amplia y comprensiva que los tribunals y los jueces han debatido sobre la naturaleza y la extension de tal frase; pero debemos tener en cuenta, Sr. Presidente, que uno de los meritos, no solamente de la constitucion americana, sino precisamente de la declaracion de derechos, es que por el uso de frase muy conocidas, se da muy amplio capo a los tribunales de justicia, precisamente para qe los tribunales de justicia pueden interpretar el sentido y la extension de las palabras empleadas en la constitucion y de esto modo poder darcampo a lo que el Presidente Marshal ha llamado "judicial statesmanship", es la flexibilidad, Sr. Presidente, de la constitucion americana, y es la razon porque favorezco el emplec de la frase "due process of law" o debido proceso legal, en la declaracion de derechos de nuestros proyecto de constitucion.

SR. ORENSE. No cree tambien S. S. que esta Convention debe procurar de su parte, insertar en esta lyy fundamental frases que no den lugar a muchas discusiones? aunque tal objetivo quizas sea perjudicial a la clasea que pertenecemos.

SR. LAUREL. Seria de desear si pudieramos hacerlo, emplear frase que no podrian dar lugar a ninguna equivocada interpre-

tacion. Pero es lo cierto qe hay tantas frases y tantas palabras empleadas en la constitution precisamente adrede para que los tribunales de justicia puedan tener amplitud de accion en la interpretation de nuestras leyes, a fin de que puedan sus decisiones amoldarse a los cambios de circunstancias y de tiempo y del progreso de la unidad, y es la razon por que ese constituye uno de los meritos de la constitucion americana. Por ejemplo, tenemos el "policq poder" o el poder de policia. Los autores de los tribunales de justicia tambien han disertado largamente sobre la naturaliza del poder de policia hasta ahora, como ha dicho el Juez Coolidge, n su tratado de la "Constitutional Limitations", y sin embargo, nadie niega la existencia del poder de policia. Lo mismo puede decirese con respecto a otros poderes inherentes el Estado y consagrados por la constitucion.

SR. CRUZ. No cree S. S. que el principal objetivo de esta disposicion, el objeto de la enmienda por parte del delegado por Manila, es asegurar o garantizar la vida la propiedad y la libertad?

SR. LAUREL. Creo qe la intention del.....

SR. CRUZ. No cree V. S. que si este es el objetivo, no quedarian mejor garantizados estos derechos inalienables como el derecho a la vida y a la libertad, el que ninguna persona pueda ser privada sino tambien orden judicial, orden de un tribunal competnte y previa audiencia?

SR. LAUREL. Es de desear ciertamente que se pudiera aceptar una enmienda en el sentido de ser mas preciso los terminos de las palabras "due Process of law." Lo cierto, es, sin embargo, que en mi humilde opinion, la enmienda propuesta por el caballero por Manila no da ese efecto en primer lugar, porque l debido proceso legal supone necesariamente la aplicacion en una ley reazonable, porque una ley irrazonable, una ley

injusta no estaria de conformidad, por lomenos, con el espiritu que entro ensse termino.

SR. CHENSE. Su poniendo ue el Delegado por Manila acepte la supresion de la palabra "razonable," porque yo coincido con sus puntos de vistacon cuenta a esa frase, ?podira el subcomite de cieto admitir esta enmienda?

SR. LAUREL . No se que es lo que piensa dicho subcomite de cierto sobre esto. Yo, de mi parte, soy de opinion que aun eliminandose la palabra "razonable," no puede aceptarse la enmienda, por las sibientes razones: primera, poruq e como ya he dicho, si hemoc de sustituir esta frase conotra, duriamos lugar al cambio probablemente de ciertas interpretaciones y probablemente habria necesidad de echar abajo decisiones consagradas desde tiempo inmemorial, desde el tiempo de Marchall y tambien decisiones sentadas por nuestros tribunales de justicia en esta jurisdiccion. Se segudon termino, y la segudna razon es porque no estoy muy seguro de si de introducirse el cambio, se mejoraria el sentido o la expresion o siquiera el lenguaje empleado en este proyectode constitucion que hoy se somete a la asamblea.

SR. CHENSE. Quiero informarle que ante de implantarse la soberania americana, a la frse "due process of law" o el debido proceso legal, era una frse completamente desconocido por nosotros y entonces aqui el unico principio mantenido antes y reiterado por el pueblo filipino mediante el congreso de Malolos era garantizar la vida y la libertad, son las frase sacramentales de que nadie debe ser rivado de la vida y de la libertad sino envirtud de una ordendictada por untribunal competente. Creo que por muchisimos silgos hemos tenido tambienaqui una administracion de justicia que no tiene nada que envidiar y de la cual farmaron parte nuestros mejores jurisconsultos.

EL PRESIDENTE. ?Esta consumiendo su sobria un turno?

S. CHENSE Estoy sentando premisa para una pregunta y noha habido jamas discusionsobre la interpretacion que se debe, dar, pues hemos de dar lugr a qe vengan interpretaciones

debo dar, pues hemos de dar lugr a que vengan interpretaciones cuando dentro de la lexicologia inglesa como de la castellana se pueden encontrar frase que vitan interpretaciones, y, por lo tanto discusiones...

MR. LAUREL. Como ya he dicho, en mi humilde opinion, creo que la frase "debido proceso legal" que emplemos en el proyecto de es mejor que la frase o las terminologias que se han empleado encl congreso de Malolos y digo esto, no obstante al admiracion que nosotros debamos proésar y tener con respecto a ese documento.

MR. LAUREL. Mr. President, I just want to say a fe words, and I will be through.

The history of the world is the historyof man and his arduous struggle for liberty. And the historyof the Philippines is the historyof the Filipinos and theirgigantic struggle for emancipation. It is the historyof those brave and noble souls who, in the ages that are past, have labored, fought andbled that the government of the lash--that symbol of slavery and despotism--might endur no more. It is the history of those grat self-sacrificing men wo lived and suffered in an age of cruelty, pain and desolation, sothat every man might stand, under the protections of great rights and ri privileges, the equal of every other man.

Every right that has been won is held in sacred esteem and guarded with intense jealousy by those who possess them. To protect and reserve tose rights: such is thedesire of the libtry-lovingand the free. With this and in view care has been taken to insert in constitutions what is commonlyknown s a Bill of Rightse- a comprehesive statement of those invaluable conquests of the past.

The students of American Constitutional history will recall that when the United States constitution was admitted to the thirteen original states for ratificiation, it did not

contain a full enumration of ancient rights and that it was ~~ratified~~ only upon the ~~express~~ promise that such an enumeration would later on be made. The promise was fulfilled by the first Congress in the form of ten amendents to the Constitution. The Bill of Rights in the Federal Constitution was, therefore, the project of popular demand, consciously and conscientiously made, as against the judgment of the constitutional convention of 1787. So high is the regard of the American people for individual rights as that the congress, in enacting the independence law, imposed as one of the conditions the insertion in our constitution of a Bill of rights.

The Bill of Rights in section 3 of the Jones Law, reproduced from similar provisions in American Constitution, both Federal and State, is well-nigh precise and comprehensive. The commitee n Bill of Rights has had a relative facile ork in this connection, namely that of adoption and adaptation. Modification and changes in phraseology have been avoided, whenever possible. The principles have been left couched in a language expressive of their historical background, nature, extent and limitations as construed and interpreted by the great statesman and jurists who habe vitalized them in the course of time.

It will not be possible to indlge in a thorough discussion of our proposed Bill of Rights. Every provision therein contained has a historical background too long to narrate. With the indulgence of this body, however, I shall briefly state the source and offer a few remarks.

I shall begin with that broad enunciation that NO PERSON SHALL BE DEPRIVED OF LIFE LIBERTY AND PROPERTY WITHOUT DUE PROCESS OF LAW NOR SHALL ANY PERSON BE DENIED THE EQUAL PROTECTION OF THE LAWS. This provision is so broad that it may rightly embrace all or our liberties, personal, civil and political (Gillespie V. People, 188 Ill. 176, 52 L. R. A.

283). The provision simply means that all person within the territorial limits of the country are protected in their life and limb, their rits by "due process of the law". The fundamental principle of "due process of law" has not been fully defined by the courts which have contented themselves in merely applying the principle to specific cases as they arise. (Twining. V. New Jersey, 211 U. S. 78). Lord Coke said that "due process of clause" conveys the same meaning as "law of the land" used in Magna Charta and the petition of Rights. This interpretation has been accepted by the United States upreme Court. (Murray V. Hoboken land and Improvement. Co., 11 How. 272, 15 L. ed. 372.). According to Dniel Webster in his classic argument in the Dartmouth College case. "By the law of the land is most clearly intended the general law,--which hears before it condemsn, which proceeds upon inquiry, and rnders judgement only after trial. The meaning is that every citizen shallhold his life, liberty, and property, and immunities under the protection of the general. rule which govern society." (Cited in U. S. V. Ling Su Fan, 10 Phil. 104). The clause on equal protection of the law seeks to abolish class distinction and was inserted in furtherance of the principle of liberty which is the greatest of all rights.

PRIVATE PROPERTY SHALL NOT BE TAKEN FOR PUBLIC USE WITHOUT JUST COMPENSATION. This provision while recognizing the sanctity of private property also recognizes the existence of the power of eminent domain inherent in sovereignty to be exercised by the government subject to the condition that just compensation be paid and the due process clause of the Constitution observed. (Visayan Refining Co. V. Camus, 40 Phil. 581). Our code of Civl Procedure lays down the manner by which the power may be properly exercised. (Secs. 241 et seg.) There are also special laws (Acts 1459, secs 79 et seg. Acts, 284, 1258, 2826). Among he Roman private pro perty could b e taken for public use only upon payment to the

owner of a value estimated by "good men." It is not surprising, therefore, to find in article 249 ofour Civil Code--which is of Roman Law origin--a provision to the same effect. Magna Charta provides that no one shall be derprived of his property except by the law of the lnd or by the judgment of his peers. The Code Napoleon (1807) whichis also based on the Roman Laws requires " a just and previous indemnity" in such case. The Malolos Constitution expresses the same idea (Title IV, Art. 17). As proposed, the provision is the same as the last clause of the Fifth Amendment to the United States constitution and the last sentence of the First paragraph of Section 3 of the Jones Law. According to ur Supreme Court, just compnesation means " a fair and full equivalent of the loss sustained." (City of Manila f. Estrada 25 Phil. 308).

Personal security against unreasonable searches and seizures is a necessy requisite of liberty. Modification of the provision in the Jones La on the subject is proposed to make it conforms entirely to the Fourth Amendment to the United States constitution which reads: THE RIGHT OF THE PEOPLE TO BE SECURE IN THEIR PERSONS, HOUSES, PAPERS AND EFFECTS AGAIST UNREASONABLE SEARCHES AED SEIZURES SHALL NOT BE VIOLATED AND NO WARANT SHALL ISSUE BUT UPON PROBABLE CAUSE SUPPORTED BY OATH OR AFFIRATION, AND PARTICULARLY DESCRIBING THE POACE TO BE SEARCHED AND THE PERSONS OR THINGS TO BE SIZED.

Tow things are prohibited by this provision. They are unreasonable searches and unreasonable seizures. Reasonables seaches may be allowed and, if the thing sought is found, it may be seizd. Searches and seizures are rasonable when there exists a probable cause threfore and they may be effected when a warrant is obtained for the purpose of the immaner provided y law. But even with a warant, entry into a dwelling is not always the owner in a criminal case. (Gould v. Us. S.,

255 U.S. 298).

It has been sugested that the issuance of search warrant be also conditioned upon the examination by the issuing magistate fo the complainant and witnesses and the taking of their deposition in writing. This requirment, however, is already found in section -96 f our Code of Criminal Procedure and its insertion in the constitution seems unnecessary. I would, however, offer no objection to the incorporation.

The "process" warrant is characteristically and peculiarly Aglican. It arose out of practice in England of issuing general warrants which authorized "searches in any place, for anything." Even in the colonies, there was a practice of issuing writs of assistance ocalled to revenue officers which empowered them to searche places believed to contain smuggled gods. That prqtice was denounced by James Otis as "the worst instrument of arbitrary power, the most destructive of English liberty and thefundamental principles of law, that ever was found in an English law book." (Boyd v. Us . S. 616; U. S. v. de los Reyes, 2 0 Phil.469). Those practices in England and the colonies were fresh in the minds of he framers of the United States constitution and they surrounded the issuance of warrant with necessary safeguards against arbitrary police measures.

The "general" warrant received its fatal blow in the famous case of Wilkes. Lord Halifax issued a general warrant for he arrest of an unknow author of the Libelous number Forty-Five of North Briton. No particular individual was described in the warrant but the police were empowered to arrest persons they might think was guilty. Many innocent persons wee arrested, and their papers were seized. Wilkes was not described in the warrant. His vic-

tory in that case was rightly called by Judge Bradley, "landmark of English Liberty." (Boyd v. U. S., Supra.) The case of wilkee is "sufficiently explanatory of what was meant by unreasonable searches and seizures." (Ibid).

It is interesting to note that the Spanishe Constitutions of 1845 and 1876 prohibit the entrance into a private house "except in the cases and in the manner expressly provided by law. This provisin led to the insertion in the Spanish Penal Code (Which was made applicable to the Philippines) of certain provisions penalizing vidation of domicile and tresspass upon the dwilling. The malolos constitution also provides for he inviolability of domicile, papers and effects. (Title IV. art. 10). But invilable as the home may be, in can neither be made the shlter of "crime and bad faith" nor be converted into a citadel for agression" within whose walls is created disorder which affects the peace of the community. (U. S. v. Vallejo, 11 Phil. 193). The malolos constitution provides that authorities, in pursuit of an offender found in flagrate who has sought refuge in his or another house, may enter said house for the purpose of apprehending the criminal. Tile IV. Art. 10). And, under our existing laws, when a crime is committed in the presence or within the hearing of a police officer, the latter may make arrests without a warrant.

The committee on Bill of Rights also recommends the insetion of the following prosept: THE LIBERTY OF ABODE AND OF CHANGING THE SAME WITHIN THE LIMITS PRESCRIBED BY LAW SHALL BE GUARANTEED. One needs only direct his attention to countries where this right is withheld to find the necessity for such a provision in his own. Liberty carries with it theright to man to live where he thinks he can best pursue the end of life. The right may, however, be restricted by the government to certain localities for rea-

some of public health or policy provided due process of law is observed. (Rubi V. provincial Board of Mindoro, supra.) The malolos constitution in Article 21, tittle IV, allowed compulsory change of domicile only "by virtue of a final judgment by a competent court.

Although the right is deeply imbedded in the jurisprudence of both the United States and the Philippines the necessity for the insertion of this provision in this jurisdiction suggest itself. (Villadolos V. Lukban, 39 Phil. 778). The incorporation of a provilon in the Bill of Rights guaranteeing the liberty of abode and of changing the same would serve to confix and strengthen an existing right.

The privacy of correspondence and communication is expressly recognized, subject to the ever-pervading police power of the state. Letter and messages are usualy carried by the agencies of he Government and unless adequate safeguards are provided for, their privacy may be wantonly violated and great harm inflict upon the citizen as a result. The precept reads. THE PRIVACY OF COMMUNICATION AND CORRESPONDENCE SHALL BE INVIOLABLE EXCEPT UPON LAWFUL ORDER OF THE COURT. This provision s not found in either the Jones Law or the United States Constitution. The absence of such a provisij in the "the noble Charter of 1878" is probably due to the fact that its framers considered such precept as already embodied or implied from the geneal provision guaranteeing the enjoyment of life, libety and property. They didnot think of the subject just as the first law-makers of Rome did not tink of punishing parricide. Niether did such a necessity appear among the Anglish peopple. Had Charls I thratened Letter, the petition of Righs wuld have mentioned privacy of communication and correspondence as one of e grivances of the English people.

A similar provision is found in the Malolos constitution

(Title IV, Arts. 12 and 13)and in the constitution of Spain, Italy and Japan.

No system of liberty is complete which does not guarantee religious freedom. The following prosion now found in the Jones Law is incorporated: NO LAW SHALL BE MADE RESPECTING AN ESTABLISHMENT OF RELIGION OR PROHIBITING THE FREE EXERCISE THEREOF; AND THE FREE EXERCISE AND ENJOYMENT OF RELIGIOUS PROFESSION AND WORSHIP, WITHOUT DISCRIMINATION OR PREFERENCE, SHALL FOREVER BE ALLOWED. NOR RELEGIOUS TEST SHALL BE REQURED FOR THE EXERCISE OF CIVIL OR POLITICAL RIGHTS.

It was lord Mansfield who said that "there is nothing certainly more unreasonable more inconsistent with the rights of human nature, more contrary to the precepts and spirit of the Christian religion, more iniquitious and unjust, more impolitic, than persecution. It is against natural religion, revealed religion, and sound policy. In England, the first steps towards religious toleration was accomplished by passage in 1688 of the English Toleration Act gurantees ing privileges to dissenters. Reactionary measure were passed later on under Queen Anne but they wre repealed by the Hanover. From the accession of Gerege Ii dissenters were admitted to civil offices. Laws aginst the Roman Catholics were likewise gradually softened. In 1858, civil disablities were totally removed.

The colinies were before the mothr country in establishing religious toleation (Stevens, Sources of The constitution of the United States, 214). This was so because whereas in England there as an established religion, in the colonies there was a medley of faiths such tht no religion could claim superiority over the others, thus rendering persecution impossible" (Green, History of the English people, v. 216). In the Constitution of the United States it is provided in Article VI That "no religion test shall ever be required as aqualification to any office of trust under the United

States.W THis was followed and complimented by the provision in the first amendment that "Congress shall make no law respectinf an establishmet of religin or prohibiting the free exercis threof." The foregoing are not prohibitions upon the state; but practicly all the states have adopted similr provisions.

The Spanish constitution of 1869 and 1876 establish a state religion for Spain but guarantee free practice of any other. (U. S. V. v alcorta, 25 Phil. 273. Said constitutins were nt made applicabe to the Philippines. It was the Tretyof Pairis of December 10, 1898, which first introduced religious toleration in ur country. (Art. X). President McKinley's instructions to the second Philippine Commission reasserted the right which latter on was incorporated in th Philippines Billin the Jones law.

INVOLUNTARY IN ANY FORMS SHALL NOT EXIST IN THE PHILIPPINE ISLANDS EXCEPT AS A PUNISHMNT FOR CRIME WHEREOF THE PARTY SHALHAVE BEEN DULY CONVICTED. The foregoing statest is the provision found in the Jones law minus "slavery." "Salvery is omitted becsuse it is a form of of "involuntary" sotitude embraced within this comprehansive term.

Little need be said in this regard. To recognize any form of involuntary servitude would be to take a backward step-- to make a shameful retreat-- to the daywhen people bowed before wealth and became abejct in the presence of a titled few. We are beneficiairies of democracy and we should endeavor to march forward rady to hand over to the succeeding generations the faming torch of individual freedom.

THE United States was born of the misrule f monarchy. The Americans wanted equlity in the Republic which they established. The constitution, threfore, was made to contain prohibitions against the granting of titles of nobilitity not only b y the Federal Government but by the States as well. (Art.

68 1, sec. 9 and 10). A provision of this nature is also found in the article of Confederation. (Art. V I, sec. 1). It was even proposed in 1810 to amend the constitution as so to penalize those who violate this provision with forfeiture of citizenship and insapable to hold office to trust or profit under the government. The proposed amendment lacked the necessary rartifiying vote of only one state (Morton, The Constitution of the United States, Its Source and Applications, 90). The Federalist (No. 84) speaking of te importance of the prohibition against titles of nobility in the Federal constitutions ays: "This may truly be dominated the cornerstone of republicangovernment; for so long as they are excluded there can never be serious dnger that the government will be any other than that of the people."

The Filipino have also suffered under the misguided rule of Monrchy and upon the first chance of drafting a constitution of their own tey provided tht no Filipino could accept "honors , decorations or orders of titles of hono s and nobility from foreign natis without authorization of the government." The government was also forbidden from establishing or granting them to any Filipino. (Malolos Constitution, Art. 32, Title IV).

It is proposed thatthe following provision now found in the Jones Law be incorporated: NO LAW GRANTING A TITLE OF NOBILITY SHALL BE ENACTED AND NO PRSON HOLDING ANY OFFICE OF PROFIT OR TRUST IN THE PHILIPPINES ASHALL, WITHOUT THE CONSENT OF THE ASSEMBLY NATIONAL, ACCEPT ANY PRESENT , EMOLUMENT? OFFICE OT TITLE OF ANY KIND WHATEVER FROM ANY FOREIGN STATE.

Since the beginning of the time has always been found gruped togther fro thepromotion of the general welfare. In anceitnt times, tribal organizations were formed for common protection and mutual help.As industries developed, gilds were organized to insure fair treatment of certain classes of wer- kers. And as civilization marched, so as the associative

principle dveloped. Associations of all sorts were organized, unions of every denomination were formd,--and just as it wold be futile to enumerate and discuss the varios associations as we find them to-day, so would it be impossible to overstate the influenne they areexerting and the important place they are occupying in modern society. They demonstrate very clearly the spirit of self-governmeh. They make people self-reliant, energetic and active.

There is no dubt that theriht of association can become dnagrous as was the case with French Clubs of the First Revolution. But it is also undeniable that the mose elementary, the more important the right is, the more dangerous, the more liable to abuse t becomes, and that unless the right is exercised with prudennce and cuatin--unless the privilege-holder is guided by reasons--evil disastrous consqeuences would ensue. This might just as well be said of every other individual right. To effset this danger limitations shold be imposed. THE RIGHT TO FORM ASSOCIATIONS OR SOCIETIES FOR PRUPOSE NOT CONTRARY TO LAW SHALL NOT BE ABRIDGED.

The forgoing provision is not found in the organic law or in the United States Constitution but the right is recognized here and in America to a greater extent than in continental Europe, subject to certain limitations presvribed by law. The Malolos constitution provides that no Filipino shall be deprived of "the Right of joining any association for all the objects of human life" not contrary to public morals (Art. 20, tit. IV).

The provision that NO PERSON SHALL BE IMPRISONED FOR DEBT is intendedto prevent the commitment of debtors to prison for liabilities arising from actions ex contratu express or impid, whethr the liabilities were incurred with or without fraud, and not for damages arising ex delictu which are punishments for he wrong committed; not to fines

and penalties imposed by courts as punishments for the crime (Freeman v. Us. S., 217 U. S., 539) or the violation of ordinances. (U. S. v. Rodriquez 28 Phil. 752).

In the dref submitted by the commitee on Bill of Rights the prohibition is not extended to non-payment of taxes. It is well-settled doctrien in American constitutional law that a tax is not a debt and that the abolition of imprisonment for debt has no application to taxes.Cooley, the Law of Taxation, Vol, I, p. 91, sec. 22). We are excepted to emphasize inthe constitution not only the right but also the duties of Filipino citizens. One of hese clear duties is the payment of taxes, and he extension of the constitutional provision to delinquency in the payment of taxes would not be much of an encouragement in the performances of these primary duties of citizenship. If the evil desired to be corrected refers to imprisonment due to non-payment of the cedula tax, then the prohibitin should at next be limited to imprisonment for non-payment of this personal tax. A sweeping general inhibitionmay prove disastrous.

The prohibition that NO LAW IMPARING THE OBLIGATION OF CONTRACTS SHALL BE ENACTED is intoded to secure private rights. (Calder v. Bull, 3 Dallas 386, 1 L. ed. 648) and has been more often relied upon by private litigants for the protection of property rights than any other sentence f the Constitution (Stimson, The American Constitution As It Affects private Right, 164), thus confirming Sr. Henry Maine's prediction that this clause is in the Federal Constitution would prove to be " the Bulwark of American individualism against democratic impatience and socialistic fantasy." (Polular goverment. 247).

The obligation f the contract is the Law which binds the parties to perform their agreement provided it is not contrary to law, morals or public order. Any law which enlargees,

abridges or in any manner changes the intention of the parties, ne essarily impairs the contract itself and is dull and void. (U. S. Diaz Conde, 2 C. C. C. 1894). The Law to be void must impair the obligation of vaid and xisting contract and the impairment must be substantial. (Detroit Union R. Co. v. Michigan , 242, Us.S. 283; Gaspar V. Molina, 5 Phil. 197).

The prohibition in the United Statew constitution was directed towards the state legislature. (Art. 1, Sec. 10? U. S. constitution.)

The prohibition that Congress shall not enact attainment or ex post facto laws was rpeated as to the states with the addition that the states shall not impair the obligation of contracts.

This provision was twice rferri to in THE FEDERALIST (Nos. 7 and 14). And In No. 44 we raed:

> "Bill of Attainder, sex post facto laws, and law impairing the obligation of contracts, are contrary to the first pr neiples of th social compact, and to every principle of sound legislation. The two former are expressly prohibited by the declarations prefixed to ene of the state Constitution, and all of them are prohibited by the spirit and scope and of these fundamental charters. Our own experience has taught us, that additional fences against these dangers ought not to be omitted. Very properly, therefore, have the convention added this constitutional bulwark in favor of personal security and private rights; and I am much deceived if they have not, in so doing, as faithfully consulted thegenuine sentiments as the undoubted interests of their constitution. The sober people of Amrica are weary of the fluctuating policy which has directed the public ouncils. They have seen with regret and indignation that suddenchanges and legislative interferences, in cases affecting prsonal rights, become jobs in the hands of enterprising and influential speculators, and snares to the more industrious nd less-informed part of the community. They have seen, too, that one legislative interfrence is but the first link of a long chain of repetition every subsequent interfrence being naturally produced by the effects of the preceding. They very rightly infer, therefore, tht some thorough reform is wanting which will banish specualtions on pblic measures, inspire a genral prudence and a industry, and give a regular course to the business and society."

Black believes that theprohibition wasinserted in the federal constitution due to thefinancial condition of

the country at the close ofthe Revolution and the disposition of the states then as to the enfrcement of pblic and privare obligation. It was realizd that the states would repdiate their debts restrained by a constitutional provision. (Black, Henry Cambell, Americanconstitutional Law, P. 708).

Although most state constitutions alredy had provisions on the subject yer there was a strong desire to issue paper money even to the extent of discharging previous contracts by the use of almost wothelss peper money. Furthermore, the vrious states wee inclind tomake liberal povisions for the relief and encouragement of the debtors to the injury and detriment of creditors and to the serious impairment of public and private credit. The prohibition was therfore inserted in the C onstitution to prevent the passage of stay laws whichwuld release debtrs from their obligations to pay. In addition to th, we find that contracts of states themselves, had been repudiated. "The Separate legislatures have so often abused the obligation of contracts," wrote Jefferson, "that the citizens themselves chose to trust it to the general, (National) rather than to thir own (State) autherities. " On the same subject,Chief Justice Marshall said a source of legislation had prevaild in the states which weakened confidence of men in man." (Quoted by Norton, the Constitution of the United States, It sources and Applications, 92-93).

T The pronibition was added in limiting states powers when it was pointed out that the term expost facto relates only to crimes and criminal proceedings. The provision was accordingly framed to cover civil cases. (Norton Ibid, 92).

While the prohibition is directly against sate action alone, essenticaly the same protection is afforded against simil r legislation by Congress by the Fifth Amendment providing that no person shall be derprived of pseperty without due process of law. The guarantee against due process is

broader than the protection afforded by the obligation of contracts clause since it exends to non-contractual as well as contractual rights. In the case of Hepburn V. Griswold, 8. wall, 603, (one of the Legal Tender cases), the United States supreme Court speaking of the prohibition with regard to the impairment of the obligation of contracts said :

"But we think it is clear that those who framed thand those who adopted the constitution intended that the spirit of this prohibition should prevade the entire bodyof tgislation, and that the justice which the constitution was ordained to establish was not thught by them to be compatible with legislation of an opposite tendency. In other wods, we cannot dot that a law not made in pursuance of an express power, necessarily in its direct operation impairs the obligation of contracts, is inconsistent with thespirit of the constitution."

THE PRIVILEGE OF THE WRIT OF HABEAS CORPUS SHA L NOT BE SUSPENDED UNLESS WHEN IN CASES OF REBLELLION, INSURRCTION , OR INVASION, THE PUBLIC SAFETY MAY REQUIRE IT, IN EITHER OR WHICH EVENTS THE SAME MAY BE SUSPENDED WHEREVER DURING SUCH PERIOD THE NECESSITY FOR SUCH SUSPENSION SHALL EXIST.

By the ancient write of Habeas corpus (have the body) the English cart reders th personhaving a prisoner in chagge to bring him before it for inquiry as to the legality of his detention. Although the privilege of habeas Corpus may be said to antedate the magna Charta of 1215, the first Habeas Corpus act was passed only in 1679. The operation of the Act has in a way been annulled and formal accusations and public trial of detained persons indefinitely deferred by the passage annually of suspension Acts.

The power to suspend the privilege should be vested in the Chief Executive and should be so stated. Art. IX sec. 12 (3) of the draft gives the power to suspend the writ of habeas

Corpus to the President. The United States constitution did not vest that power in the president, and because mentioned in Article I which deals with the legislatige powr, it has held that the power is enfided to congress alone. (Ex. parte Hollman, 4 Cranch, 75, 101, 2 L. ed. 554; Ex parte Milligan, 4 " Wall. 115, 18L. ed. 281). The power, howver, was at one time giv given to Presient Lincoln by the Congress. (Norton thee constitution of the United States, It Sources and Applications, 83-88) The President is the commander-in-shief of thearmay and navy. The power may best be exercise by a single individual rather than by the legislative body. Prompt action is necessary in cases of public danger wheh shold cause such suspension, wheh is ordered usually after maritla lw has been declared in a particular district. (Bal, American Constitutinal Law 7037).

NO EX POST FACTO LAW OR BILL OF ATTAINDER SHALL BE ENACTED. This provition is found in the American Federal Constitution. (Art. 1, sec.) and is applicable to the states (Id., sec. 10). An ex post facto law is a law which makes an act punishable im manner in which it was not punishable when committed. It creats or aggravates the crime or increases the punishment, or changes the rules of evidence for the purpose of conviction. The prohibition against the passage of ex post facto law is an additinal bulwark of personal ssecurity--protecting the citizen from punishment by legislative act which has a rtrospective operation.

The phrae ex post facto law has a technical meaning and refers to crimes and criminal procedings. It has in this sense that it was used in England. It was in this sense that the Convetion of 1787 understood it. 'Calder v. Bull, supra; Watson v. Mercer 8 pet. 88, 110; Suterlee v. Mathewson, 2 Peters 380; Kring v. missouri, 107 U. S. 221). This interpretation was upheld by ur Suprem Court . 'U. S. v. Ang ken Ko, 6 Phil. 37).

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A bill of attainder is a legislative act whichinflicts punishment without judicial trà l. (Commings V. State, 4 wall, 277 18 L. ed. 356). In England, the Bill of Attainder was an act of aparliamenta by which a man was tried, convicted and sentenced to death without a jury, without a hearing in curt, without hearing thewtnesses against him and without regard t the rules of evidence. His blood was attainted or corrupted rendering him devoid of all heritable quality--of aqquirign and disposigng property by desencut. (Ex parte Garland, 4 Wall. 333, 18 L. ed. 366]. If the ~~XXX XXX~~ penalty imposed was less tha death, the act was known as a bill of pains and penalties. Bill of attainder, like expost facto laws were favorite methods of Stuart oppression. Once, the name of Thomas Jefferson was included in a bill of attainder presented to Parliament because of his reform activities, but the bill was not pressed to a vote.

Often, such bills wase "stimulated by ambition or personal resentment, and vinditive malice." (Calder v. Bull, supra). A well known case illustrating theruthlessn~~XXX~~ manner in which a bill of attainder was rserted to was tht of Thomas Wentworth, chief advise r of Charles I. He was brought to impeachment charged with attempting to subvert the libeboies of England. He defended himself so ably that his enemies fearing his acuital, withdrew the impeachment and a bil of attainder was passed instead. Wentworth was beheaded. Bills of attainder was also passed in colonies. (Norton, the Constitution of the U. S., Its Sources and Applicatton, 85). The prohibition in the Bill of Righs, therefore, seeks to prevent acts of violences and injustice brought about by the passage of such bills.

The fights of prsons accused of crimes are considered of primodial importance. When a person is indicted he forms one party and the government--society--forms another. It is evident that unless strng and district guarantees are given the former

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there can be no security aginst oppression by the later. The Government is desirous of carrying into effecg its vavowed pru prpose of repressing crimes and criminals through the exercise of superior powers which arear likely to be abused in the absence of effective check measures. History records of numerous trials in various countries which are as shocking to the feeling of humanity as they are to the laws of logic. With all the consitutional guarantees in the United States, Prof. Edwin W. Borchard, of Yale University, presens an apalling cross-section of miscarriage of justice in the American continent inhis book entitled "Convicting the Innocent."

Reforms in penal procedure have been slowly accomplished due to the fact that the persons affectedare generally unifluencial and lagyers are susually attracted more to the civil than to the criminal branch of the profession.

It is the duty of he present generation, through this constitutial convention, to preserve the rights to accused persns, rights when after long and arduous struggle in the past, won. These rights are already embodied in the present prganic aw an in our Code of Griminal Procedure.

The most comprehensive and far-reaching of these rihts is that which declares that NO PERSON SHALL BE HELD TO ANSWER FOR A CRIMINAL OFFENSE WITHOUT DUE PROCESS OF LAW.

The accused is deemed to have had due process of law if he "has been heard in a court of competent jurisdiction, and proceeded aginst under the orderly pssses of law, and only punished after inquiry and investigatin, upon notice to him with an opportunity to be heard andjdgment awarded within the authority of the constitutional law." (Ong Chong Wing v. U.S. , 218 U. S. 272, 54 L . ed. 4040).

ALL PERSONS SHALL BEFORE CONVICTION BE BAILABLE WITH SUFFICIENT SURETIES, EXCEPT FOR CAPITAL OFFENSE; EXCESSIVE BAIL SHALL NOT BE REQUIRED. Even in the freest countries thr' a painful yet unavoidable contretion that while an accu'

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presummed to be inocen until the contrary is provd, he is nevertheless arrested and deprived of his liberty until trial takes place.To mitigate this harshemss, and to preven long and undue imprisonments, the constitucion of all free nations gumrantee the rights of bail. As far back as 1444 the Pariliament of England passed an act wnich required shrriffs and ther officers to "let out f rison all manner of pesons upon reasonable sureties of sufficent persns." To prevent the defeat of the righs of bail, it is provided that "excesive gail shall not be required."

But the right shold not be extend to all cases. Capital case are excepted since the punishment for death or life imprisonment which are imposed in those cases do not find any equivalent inmoney and because the offense committed is so grave that the escapte of he offender is sought to be prevened. Suggestion has bem made that the provision of Sec. 63 of Crimnal Procedure All pisoners shall be bailable before convictin,except ths charge d whith thecommission of capital offenses when proof of guilt is evident or the presumption of guilt is strong.) be adopted in neu of what is provided in the draft. This is not believed necessary, especially in the light of the decision of our Supeme Court in the case of Montalbo v. Santammari, 54 Phil. 955, but there is no serious objection to accepting this suggestion.

It is also important to that a wel-regulated penal trial be provided for. The following provision froms the basis of a carefuly elabroated system: IN ALL CRIMINAL PROSECUTIONS TH ACCUSED SHALL BE PRESUMED TO BE INNOCENT UNTIL THE CONTRARY IS PROVED , AND SHALL ENJOY HE RIHT TO BE HEARD BY HIMSELF AND BOUNSEL, TO DEMAND THE NATURE AND CAUSE OF ACCUSATION AGAINST HIM, TO HAVE A SPEDY AND PUBLIC TRIAL, TO MEET THE WITNESSES IN HIS BEHALF. HE SHALL NOT BE COMPELLED TO BE A WITNESS AGAINST HIMSELF.

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The presumption of innocence spoken f in the first part of the foregoing provision s not found either in the Jones Law or in American Constitutions. It is, however, a rule of law recognized by all of civibized mankind and has found a place in our code of Criminal procedure (Sec. 58). No person accused of a crime can hope to receive a fair andimpartial trial if at the outset he is deemed guilty of the crime of which he is chargd. It is the burden of the prosecution to prove the gult of the defendant beyond, a reasonable doubt. If he prosecution fails in this regard, the defendant is entitled to an acquittal. And theacquittla has to be total. The defendant shold eiher be declared guilty or not guilty. There can not be no such thing as "half and quarter proof" and "proportial punishments " as formerly recognized incontinental Europe The judge can not say:" We can not find you gilty now but we may pick you up for sam offense next tiem." (Liber, Civil Liberty and Self-Government.) In a sne, therefore, this povision has led to the prohibition against double jeopardy which I shall discuss later.

The right of an accused to be heard by counsel wa s denied in England for a long time in capital cases. This deficiency in England procedural law was supplied in the United States constitutiam by the gurantee of counsel in all cases. The defeat in the English system was remedied later in 1836. (Cooley constitutical Limitations, 330-338).

It is the right of a person accused to crime to demand the natue and cause of a accusation against him. He should know for what cause and of what crime he is being charged. The Petition of Rights denounced the former practice in England of imprisoning freemen "by the ing's special command, without any charge."

The Petition of Rights also complained of the denial of the Right to a speedy trial. As a result, it became the practice to issue "letters patent," from theking ordering the clearing of jails of all prisoners for the purpose of bringing them to trial.

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This was dne twice a year. A provision for speedy trial may also be found in the Malolos Constitutin.
(Art. 8,Title Iv). A speddy trial has been dfined as a trial behld at such a time as shall afford the prosectiontime to prepare, after a fir and hnest exercise of a reasonalbe diligence, for trial. (U.S. v. Fox, 3 Mont. 512). Trial should also be pulbic inorder to offset any danger of conducting it inn illegal and unjust manner.

The accused ahas also the right to meet this witenesses face to face. This right may, however, be waived. I Diaz v. S. U 223 U. S. 442, 56 L. ed. 500).

There was a time in England when the deposition of witnesses were taken and readi in cart. This prevented the accused from being confrnted by the witnesses against him and of cross-examining them. Sir Walter Raliegh was condemend to death on the written testimony of a single witness who had in the meantime recnd his accusations. (Horton, the Constitution of the U. S. , Its Sources and aplications, 219).

The practice in Imperial Rome conforms to the rule f confrontatin and is ilustrated by the case of St. Paul. Festus, the Roman procurator of Judea, canswered the accusers of St. Paul thus: "It is not the manner f the Romans to deliver any man to die before he which is accused has theaccuser face to face, and has license to answer for himself concernig the crime laid against, him." (IAct. XXV, 16). And when St. Paul was sent before Felix, Romangovernor of Caesarea, the governor, after reading the letter of accustin, said: " I willhear thee when time accusers are also come." (Acts XXIII, 35).

The pyivilege granted the accused to have compulsory process to compel the attendance of witnesses in his behif, as practised, in England at thetime the United States Constitution was being drafted, was not alowed in ordinary original cases. The Framers of the United States Constitution improved upon this practice and as employed today the privilege extends to

all criminal cases.

The prohibition against self-incrimimtion is found in the Fifth Amendment to the United States constitution and is one of the cornerstones of English liberty. This prohibition arose out of a practice in England and the colonies of compelling the accused to be a witness against himself.

Even the criminal is entitled to the protection of just and humane laws. Hence, the requirement that Excessive fines SHALL NOT BE IMPOSED, NOR CRUEL AND UNUSUAL PUNISHMENT INFLICTED. The provision of the Jones Law corresponds to the third and last clauses of the Eighth amendment to the United States constitutin which is a transcript of a clause in the Bill of Rights framed after the English Revolution in 1688.

The excessive fine under Magna Charata was the penalty or forefeiture wheh deprived a man of his "contentment"--of his living and ability to pursue his caling or profesion.

Cruel and unusual punishments are prohibited. As we read ancient and mediaeval history, we learn of criminals being whipped, their ears and noses cut, their yes plucked out, and their checks branded. We read of them being hanged, thrown into dungeons to die of thirst andcold and hunger, or left in the forests for wild birds and beasts to feast on . Blackstone relates that as late as 1759 the punishment for treason in England was terrible. The guilty person was hanged by the neck, but down alive and disemboweled while lving. His head was cut off and his body divided into four parts for disposition by the king. The punishment was mitigated in 1814 and by parliament. The punishement in continental Europe was even more sever. (Horton, the Constitution of the U. S. Its Sources and Applications, 224). Acts of cruelty are unworthy of human beings--of the name of man--and they should never be tolerated in a land where law and justice obtain.

The Supreme Court of the United States in Weems vs. U. S. 217 U. S. 349, held that the penalty of Caena temporal, which is prescribed by the old Penal Code for the crime of Falsification of a public document by a public official, is a cruel and unsual punishment. It is generaly believd, however, that the Federal Supreme Court was misled by the English Tsanslation f the Penal Code and our local Supreme Court declined to extend the ratio decidendo toother cases (U. S. v. pico, 18 Phil. 386).

Finally, it is one of the universal maxims of Anglican liberty that NO PERSON FOR THE SAME OFFENSE SHALL BE TWICE PUT IN JEOPARDY OF PUNISHMENT. This provision now found in the Jones Law coresponds to the secnd clause of the Fifth Amendments to the American Federal Constitutin. It descended from the days when sanguinary punishments were frequently resorted to by despots. A defendant in a crimnal case should be adjudged either guilty or not guilty. If he is not guilty, the prosection can not appeal. There can be no double jeopardy of punishment.

The decision of the Supreme Court of the United States in Kepner V. United States, 195 U. S. 100, has not escaped criticism, and suggestion has been made to set aside the ruling in this jurisdiction by the constitutional provision to the contrary. The principal objective was either to permit of appeal in case of acquittal of the acussed or at lesst to provide for a review at the instance of the Government by an appellate court of questions of law, without disturbing the verdict in favor of the defendant. The following quotation, howeve, from Prof. Willoughby (Constitution of the United States, Vol. 2, sec. 709 pp. 1163-1164] is illuminating and in my mind desicive:

> "Despite this argument, the weight of authorities, both State and Federal, is overwhelming that, as stated earlier in this chapter, a verdict or judgement in a lower

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court of competent jurisdiction is fimal and conclusive and to the defendant. Provision has, however, beenmade in some of the states, and similar action has recently been taken by congress, to provide for a review at the instance of the Government in a superior court of questions of law, with, however, the proviso that a verdict in favor of the defendant shall not be set aside. The objection however, to such a proceeding is not only that it raises in the superior court merely moot questins, but that, irrespective of whether the superior courts will feel themsevles bound or evenconstitutionally qualified to pass upon poins with reference to which they are not able to issue any appropriate orders, there is the objection that the defendant, having no reason for contsting them, the decisions willbe based upon ex parte argument, with all the evisl gemerally recognized as thereupon attending."

The Federal Act refred to was that of March 2, 1909, which provided as follows: "That a writ of eror may be taken by and on behalf of the United States from the district or circuit courts direct to the Supreme Court of the Unitd Stats in all criminal cases, in the following instances, to wit: From a decision or judgment quashing, setting aside, or sustaining a demrrer to, any indictment, or any count thereof, where such decision or judgment is based upon the invalidity or construction of a statute upon which the indictment is founded. From a decision arresting a judgment of conviction for insufficiency of the indictment, where such decision is based upon the the invalidity or construction of the statute upon which the indictment is founded. From the decision of judgment sustaining a special pla in bar, when the defendant has not been put in jeopardy. The writ of error in all such cases shall be taken within thirty days after the decision or judgment has been rendered and shal be diligently prosecuted and shal have prpecedence over all other cases. Pending the prosecution and determination of the writ of error in the foegoing instances, the defendant shall be admitted to bail on his own recognizance: Provided that no writ of error shall be taken by or allowed the United States in any one where there has been a verdict in favor of the defendant."

The following provision is not in the report of the Committee on Bill of Rights, and, although deemed a surplusage, is a good guiding prieniple and may be allowed to stay : THE STATE SHALL NOT DENY TO ANY PERSON (CITIZEN FREE ACCESS TO THE COURTS BY REASON OR POVERTY.

The provision in the Jones law to the effect that NO LAW SHALL BE PASSED ABRIDGING THE FREEDOM OF SPECH OR OF THE PRESS? OR THE RIGHT OF THE PEOPLE PEACEABLY TO ASEMBLE AND PETITION THE GOVERNMENT FOR A REDRESS OF GRIEVANCES was copied verbatim from the first amendment to the United States constitutin. A similar provision is found in the Malolos Constitution. (Title IV, Art. 20). The Comite on Bill of Rights in its report recommended the incorporation of this precept,

without any change. In the final draft of the constitution now submitted for the consideration of this body the following provisins are however substituted.

"No law shallbe passed abridginf the fredom of Speech or the right oof thepeople peaceably to assemble and petition the Government for redress of grievances.

"There shall be no limiatios to the Freedom of the press except those required by god morals and public order. No publicatin shall be suppressed except by final decision of a competent court."

It should be observed that the limitatins mentioned with respect to the fredom f the press are all well-known and to the existing provision in the United States constitution. A careful analysis of the proposed change will show that it is not an improvement upon the timehonored precept as embodied in the Jones Act. Upon the other hand, let us not create the impression that the freedom of speech is more important thanthe fredomof he press. Why restrict or liberalize the one and not the other when both are equally important? The limitation as to "good morals " should better be left out. We cannot define them in the constitution when even if we wuld want to. Also, the suppression of given publication by final order of the competent court is an unwarranted limitation upon the freedom of the press, and is ineffective at that, because pending final judgment of the curt, the publication may continue. I, therfore, plead for the acceptance of the original recommendation of the committee on Bill of Righs, that is to say the aproval of the following precept : " No law shall be passed abridging the freedom of speech or of the pras, or the right of the people peaceably to assemble and petition the Goverrment for a redress of grievances."

Now a few words concerning the freedm of speech and of the press and of the right of petition.

Free Speech is, to quote Wendell Philipps, "at once the instrument, and the guarantee, and the bright consumante flower

of all liberty." A free and vigilant press is euqlly indispensable. It is "one of the chief educators of the people--an element to pervdin in its influence, and withal so poerful" that it can not be overlooked. (Cooley, Constitutonal Limitations, 641). cited by Malcom, Philipine Constitutional law, 413-414).When a repression of political and religious discussion became intense-when censrship o the press was resorted to most igorously by the Long Parliament in England--John Milton, tht great historiographer of Cromwell, in his areopagitca, denonced the suppression of truth and eappealed for "the liberty toknow, toutter, and to argue freely according to conscience, above all liberties." (Arogpagtica, 73, 74, Ablear's reprint.) Censorship existed from the time the printing prewss was invented in the 15th century Before 1394, licensing acts were enacted repetedly in England. Unlicensed puboications of seditious and sancdalous matter were punished wit death and mutilation.And it was not unt l the accession of George III that the English Press beame truly un-press"had done more for libertyand for civilization than the Great Charter or the bill of Rights of England." (Historyof England, IV, 543).Ad as Mr. Justice Holmes has cautioned, "We shmid be eternally vigilant against attempts to checks the expession f opinions" which fre speech and free prss guarantee. (Stromberg V. people of California, 283 U.S. 359). Censorship also existed in the colonis until abot 1755. (Tyler, History of American Literature, I,113). It is relsted that in 1723 the illustrious Frnaklin left Massachussetts for Pennsylvania dn his brother was impresoned on account of a libel. (Stevens, Srources of the Constitution of the United States, 221, n. 2).

Freedom of the press is the right to public the truth with good mtives and for justificable ends without previous license or censorship. 9(6. R. C. L., 254).Such as definition implies restrictions. "The freedom of the press is not an ab solute right that gives immunity for every possible use of language." (Gitlow V.Sanford, 267 U.S.)

when the wods used are in such circumstances and are of such a nature as to create a clear and present danger that they will bring abut he substantive evil that (the state) has a right to prevent," then punishment may attach to him who has aused this freedom. (Schenck v. U.. S. 249 U. S. 47).

Rizal in the Philippine A "entury Hense" (p. 62) and Mabinia in his "La R volucion Filipina" expressed the longing of their countrymen when they pleaded for liberty of the press. Wd may well repeat now what Mr. Justice Malcolm of our Supreme Court said sixteen years go: AA feform so saced to the people of these Islands and o at so far a cost should now be protected and carrid forward as one would protct and preserve the covenent of liberty itself." (U. S. v. Bustos 37 Phil. 731).

The right of assembly and petition is rather the origin than a derivationof freedom and speech and of the press. (Stimson The Smerican Constitution as it protects private Righs, 152). According to Chief Justice Marshall, it originated"from those laws whoe autority is acknowledged by civilize man throughout the world." (Gibbons v. Ogden, 9 Wheat. 211). It is an important attribute of civilization and a necessary conequence of republican intitutions. "The very idea of a government, republican inform," says Chief Justice Waite, "implies a right on the part of its citizens to met peaceably fro onsultation in respect of public affairs and to petitionfor a redress of grievances." (U.S. v. Cruikshak, 92, U.S. 542 23, L. ed. 588). But, the persons participating in these meetings shold answer for the consequences of their acts. (U. S. v. apurado, 7 Phil. 422).

Formerly, the right to petition in England was limited by only to redress of grievances. Later on, petitions of political subjects came into being but Charles II regulated this right. The privilege was embodied in the Bill of Rights of the subject to petition the king; and all commitments and prosecutions for such petitioning are illegal." The present practice

of petitioning the government for he adoption of certain public measures and policis my be said to have begun in 1779 hen a widelyormized attempt, thrgh numerous signed petitions, was mde to procure the adoption y parliamenta of a certain measure. The rpvilege came into special prominence in the colonies during the revolutinary epoch. The Congres of 1774 stated in the Declaratin of Rights: "They, THE COLONISTS, have a right peaceably to assemble, consider grievances, and petition the king, and that all prosectins prohibitting proclamations and commitments for the same are illgal."

It is now a settle doctrine, howeve, that the official conduct and the policies of public officials can be severelycriticised withut danger of pumishement. (U.S. v. Bustos 37 Phil, 731). Neither can critism o the constitution and legislation of government measures or policis be suppressed or preventes. (U. S. v. Perfecto, 43 Phil., 225) unless the intention be to incite revellion and civil war. (Cooley, constittional Limitetions, 614).

C O N C L U S I O N

In conclusion, I wish to state, in the name of orur committee, our gratitude to the sponsorship committee and its subcommittee of seven for their having seem fit to accept practicaly the whole of our sport. The Tydings-McDufie Law requires tht we insert in our constitution a bill of Rights, I repeat even without this requirement, it would be inconceivable for us not to do so. There is no constitution, worthy of the name, without a bill or declaration o rights. This billof Rights is to be, as it were, the living gospel of thelibertise of the people. It is not to be the catalogue or compilation of inhibitins or restrictions upon the people are sovereing. Rather, it is to be the palladium of their libeties and immunities, so that their persons their homes, their peace, their livelihood, theirhappiness and thhir freedom may be safe and secure from an ambitious ruler, an

envious neighbor, or a grasing state. Under this Bill oF Rights, we shall have no peculiar corpus Juris to govern the relations of the governmet and the officials no special type of administrative law as this system is know in some countries of continental Europe. We are creating a strong Executive, assertive National Assembly, and an independenc judiciary, but no official however high in our government may overpass or transcend the limitations go to the veryrroot of the power of the Gobernment "to act at all irrespective of time and place."

Attention has been called by a leading political scientist of our country (Dean Maximo M. Kiaw) to the necessity of formulating our Bill of Rigs no longer on the basis of inherent nf natural rights f man-because this theory is now obsolete-- but rather on the basis of scial rights, as the state is, in the modern theory the creator of diapenser or right. Se wshould not however, be allured by new and untried dogmas and theories in the formation f our Bills of Rights, and agins I suggest that we dopt a conservative attitude in this connection. Ther is in reality nothng new inthis proposed Bill of Rights. It is but a restatement of wht is fund inthe Jones Law, and the Bill of Rights contained inthis law is in turn but a reproduction of similar provisins in American constitutions, both Federal and State. The existing Bill of Rights embodied inthe Jones ~~Bill~~ Law is believd compehensive enough and has worked out satisfactrily. It has become part and parcel of our jurisprudence and carries with ti the interpretatiow given by the great jurists and statesmenwho have vitalized its provisions. Agan, it were btter tht we "keep close to the horest let other venure on the deep." Upon the other hnd, notweithstanding the fact tht the Bill of Rights of the United States Constitution may be sid to be founded on an absolute theoy, it has withstood the test of time, and formore than one nd one-half century has not suffered an amendment. Congress, from time to time, has passed legislation on labor and capital and other matters affecting social conditions

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in American but the American bill of rights has been able to adapt itself to changing conditions and environments. This shows the flexibility of he bill. In the very draft itself ot the Constitution that we are esidering wefind provisions pertaining to social justice and of socialistic tendencis. For instances,we find limitation upon private ownership of Agricultural law (Sec. 15 art. XIII); we natinalize KER or socialize railroads, telegraphs and other means of comjunications, as tthey have dne in the United States (Sec. 10, Dbod)' we natinalize our natural resources (Sec. 13, et seq.); we make it the futy of the state to safeguard social progress of the inhabitnts, etc. (Sec. 9 ibid) we require the State, in the interst of social justice to afford the necessary protection to labor, especially to women and minor,s and to regulate the relatins between labor nd capital and landlord and tentant, both in agriculture andindustry (Sec. 7 ibid) etc. More than that, to gain economic and social fortitude we provide in this draft for delegation of legislative authorty to the President in connection with the fixing of tarrif rates, tonnage and wharfage dues (par. 13, sec. 5. art. VII) and the promulgation of rules and regulatis to carry out a declared national policy in cases of emergency (Par. 15 ibid). And yet, our proposed bill of Rights, I dare say,may be made to adapt itself to these perchance revolutionary provisions, throgh properinterpretation and application of the reserve police power of the state. The task in this respect wil b e thrown mainy on the judiciary and to some estent on the political departments of thgo government. We shal need to summon bit ony the learning but the vsion and patriotism of uour judges, so that in the process of exposition and construction of the fundamental law,tey mayemulate the "judicial statesmanships" of the great John Marshall of the Supreme Court of the United States. Let our judges be, as it were, the vestal kepers of the purity and anctity of our constittion and the protection and vindication of popular rights will, I will trust, be safe ans secure in their revenrential

guardianship.

Mr. KINTANAR. Mr. President, will the gentleman yield ?

THE PRESIDENT . The time of the gentlemaphas expired.

SPEECH OF DELEGATE ABORDO
IN FAVOR OF THE ARANETA AMENDMENT

MR. ABORDO. I wish to begin by congratulating allthose who have participated in the preparation of the draft of the Consti tution, more particularly, the Chairman of th Committee on the Bill of Rights, the ditinguised Delegate from Batangas, Dr. Laurel, fro his conservtive attitude in avoiding any radical departure from the orthodox articulation of the inalienable rights of the people.

I wish to for our country a clear constitution, understandabele not only to the enlightened people but also the ordinary laymen. If there is ay part of our constitution which should meet this requirement, it is tht part definig that inalienable rights of the people. Our present one basd principaly on the phrase "due process of law" is not easily understood; it is harly understood at all by the rank and file f our peple nd, I venture to say, that many of us awyers do not always remember, norare we always sure of he meaning of those words. My, I may say that even such great American jurists as thejustices of the Supreme Cut of the United States have not always been in agreemnt as to the meaning that should be given to the phrase "due process of law."

There would be some jurisdiction in dopting in our consti tution the words "due process of thelaw" if the same wold carry a well-defined meaning,whih apparently is theimpession of many of us. But my friend, you have to read abundant American literature befo re you may say that you finaly discovered and mastered the meaning of these tree mysterious words,and even after reading t e copious listrature that exists, explaining and expounding,them, even after you have red thethousands of Americandecisins handed down applying the and vitalizing them, I am afraid that many of us will still be in the dark and

will still hesitate to assert and that tey have finally succeeded in discoverin their true meaning.

The classical definition of the thrm "due process of law" which is regarded as being ynonymous to phrase "law of the land" was made by Daniel Webster in the famous Darmouth Colege case where he appeared as one of the counsel, a definition which was dopted by the Supreme Court of the United States. The same is the following:

> By the law of the land is most clearly intended by general law--a law which hears befoe it condemns, which proceeds upon inquiry, and errders judgement only after trial. The meaning is tht every citizen shall hold his life, liberty, property and immunities under the protection of the general rules which govern society.

Prof. Sinco quots this definition in his book on Philippine Government and Political Law (P. 390) and is apparently satisfied with the same. This defintion is to all purposes not correct in view of the latest decisins of the Supreme Court. You will ntice tht thedefinition embraces two sentences. In thfrist sentene it is stated that due process of the law requires that the deprivationshall be preceded Bby judgmnt only fter trail" thereby implying a trial in a court of justice. And yt, we all know that the government is many cases deprives a person of his property in the form of taxes, ad ministrative fines, etc. Without trial and judgement from a court of justice. Th e secnd senence of Webster's definition to the effect tht every citizen shall hold his life, liberty and propertyundr the protection of the general rules which govern societyis simply begging the question.

Succintly stated, I submit tht the diffemnt meanings infused in the words "due process of law" during its long

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history are the following: First, it was said tht it simply provides tht no prsonshal be derpived of his life, liberty and property unless in incormity with law. The law cold be unreasonnble eiher inits substance or in the procedure whichit prescirbed fro theenforcement for penalies. Under the original meaning, in nne of thse two cases would this constitutinal inhitibition be of any assistancel The second meaning givento this clause consecrated the prosedure known to the comun law which a still late r modified toinclude the rocedure already existing and known at the time the constittin was enacted. Under this view here cold be no developmentin the legal procedure. The third meaning appended to the clumse is that no one should be deproved of his rights without the interventiomof a court of justice acting with a jury. It should be notied that this requirement. was expressly extendeed not only to life and liberty but some courts have even extended it to property. The fourth meaning ascirbed to theclumse is that it gurantiee a reasnable procedure Before a prsonmay be deprived of his ife, liberty and property. And the last and most modrn meaning given to it is that thesubtantival law authorizing the deprivation of life, liberty and prpertym must be reasonnble.

After this expositon, you willunderstand how truly an author has said, refrring to the phrae due process of law:

> My excuse fo this address is a belief that the ancient words do not (Various courts to the contrary notwithstandint) sepak to us with the same voice, or cannot the same mental assumtions, or suggest the same backgrous political and social, as they did two genertions ago, or evenwhenmy generatin at the bar took the professional oth. (32 Harvard Law Review) P. 218)

We propose that the cluase guaranteeing due rocess of Law be restated as follows:

> N No person shall be derprived of his life nor imprisoned, unless in enformity with a reasonnble law and by order of a competent court of justice decred after reasonnable procedure and hearing prescribed by law.

No public officer shall curtial in any way the liberties and rights of an individual nor deprive him of his propertyunless in cornformitywith a reasonable law and procedus.

In the draft of the constitution which we hve under consideration, a new cnstitutional guaranty hasbeen incorporated which provides thi no publication shall be suppressed except by final decision of a competnet court. Now if there are weighty reasons that justify this express constitutonal guaranty which clearlyprovides that no publication shall be suppressed unless after final decision by a competent court of justice, I believe that with more reason we should expressly provide for the cnstitution that no person shall be deprived of life nor imprisoned unless after a final decision of a competent court of jutice. It is doubtful whether this guaranty is euly protectedunder the present wording of the due process of law clause as interpreted and expounded by American courts. I believe that tn matter is of sufficient importance tojustify an e express declaration of such a constitutional guarantee. On the other hand, I bhieve that while a personshould not be puto to death or imprisoned unless by a final decision fo a court of justice is not necessaryi in connection with the other rights and iiberties and of a person.

Because of these considerations I believe that it is necessary to restate the due rocess of la in twosentences. The one to define what is due process of law in connection with the life and physical liberty, and the other todefine due process of law in connection with property and other liberty rights of the people.

Before th phrase "due process" had received the broad meaning which it now entails,courts had declared enstitutional some statutues which did not conflict with any express provision of the constitution. To justify the declaration of unconstitutionality the courts at that time would say that the law was against the natural lw, or natural justice, or against

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the social compact a gainst the inseprable incidence of republic can government. Gradually, nowever, a new enlarged meaning was attached to theword due process of law making it synonymous with reasonableness. In this connection, I shall quote from an article entitled "The natural Law Backgrounid of the Due Process" by Mr. Grant published in the Columbia Law Review, vol, 31, page 57 the follswing :

> Before many years had passed, a broadened construction of the "due process" clauses of the fifth and fourteenth amendments made future references to "natural justice" and "the social compact" les necessary. Today, of course, under the all-ersumsive interpreation of this magic phrase,to erefer to 'insuperable incident of repbicam government" as the bais of judicial reviw would be the same of the superflous But he Doctrine was not without its improtance in guiding the development of this child of the Civil War. In fact, the modern definition of "due Process" is merely the "natural justice" of story; Marshall, maller, Fields, et al. Under a new name, "reasonableness." (P. 65)

It is the purpose of this restatement of the deu proxess clause toake it clear that we adopt in orur country the latest interpretation given to ths clause by the supreme Court of the United States. After this explantion, I trust that "reasonable," im insected making it clear that the law which deprives deppives a person of his life,libertyor propertyXXX XX must be reasonable in its substantive character and inits prdcedural character.

May I be permited to bring to you atention the fact that evenin the United States the greatest legal luminiries have found that it necessary andconveninet to drft a restatement of herlaws, having alreadyproduced the law of contracts, the laws of s

law of trust, etc. The situation which gave rise to this monumental work of he AmericanLaw Institue is described by Elihu Root as follows:

"It was apparent that the confusion, the uncertainty was growing worse from yer to year. It was apparent that the pastMK multitude f decisions which our practitiones were obliged to consult was reaching a magnitide which made it impossible to in ordinarh pra practice to consult them."

I repectfully submit that the Bill of Righs and more particularly the due process of law as expounded bythe many courts of justices is badly in need of clarification. It is the duty and the grent rivilge of this convention to clarify the Bill of Right in a language palatable to thebench, the bar and the people of the countty.

With the wealth of experience thar had piled up since the Magna Charta andthe original Bill of Rights was writen, a qbndant literature has developed and great light has been shed on it. There is no reason why we shold not take advantage of this wealth of literature and mbrial to restate a modern Bill of Rights instead of perpetuating the form of the old one articulated in words that nolonger carry their original meaning. words that, to say the leat, will always constitute a mystery to our countrymen not familiar with the historyof English and American constitutin. I saythat with your cooperation, with the discussion which I hope will arise with the amendments that we have proposed we shal be able tomake a restatement o the Billof Rights in words familiar to our people, thereby offering to them a Filipino magna Charta in which our people shall always find protection, because theyknow its meanng, a protection which shal not be left tothe caprice of judges, who should not be allowed to work to under the cover of words that are mysterious andunintelligenbly to the people.

Notwithstanding the statement found inthe preamble of the Draft, we would not be approving a constittion that embodies our ideal, if the Bill of Rights is not submtted to the valuable test of a thorough discussion in this constitution. Only by subjecting the different provisin s the proposed bill of rights to our constructive criticsm and serious medition givng due regrd to the virtues and the defects of our people and the customs in this country shallbw esucced in articulating a restatement of thebill of Rights that will insure peace and order in the country under a rigime of liberty, justie, equality, and democracy which constitutes sme of the avowed purposes of the Draft of this constitution in the words of its Preamble.

Gentlemen the spirit of the constitution is found in the Bill of Rights. Paraphrasing Mr. Justice Brandeis, one of the greatest mnds of the Supreme Court of the Unitd States, in writing our bill of Rights we should recognize the significance of manís spiritual nature and seek to protect us, the people, in our belief s our thoughts, our emotion, our sensations and thus undertake to secure conditions favorable to the pursuit of happiness. It is here hoped that the spirit which this august body will finaly impart to our constitution willbe the Filipino spirit, the soul of our country.

MR. VINZONS. Mr. President, wI was going to speak infavor of my amendmet, but I think i twillbe better to have somebodyspeak in favor of my amendment. I cede that right to.....

THE PRESIDENT. You can not cede any riht that is not granted by our rules.

M. VINZONS. The rules grants three speakers, mister president.

THE PRESIDENT. AAnybody can spek; that is provided for in our rules.

MR. VINZONS. If there is nobody interested to speak....

THE PRESIDENT. You can speak if you want to, but you can not cede that right. That is not granted by our rules.

SR. ARANETA. Si no hay mas turnos en contra, como quiera que de acuerdo con los reglamentos, el proponente de una enmienda tiene derecho a dirigir los turnos, yo querria cerrar el debate.

EL PRESIDENTE. Cualquiera Delegado puede hacer uso de la palabra.

SR. ARANETA. En el caso de la mocion presentada por el Sr. Romero, se sento la regla de que el proponente de una enmienda puede cerrar el debate.

EL PRESIDENTE. El Sr. Romero tuvo que ceder a otro su turno.

MR. CINCO. Mr. President, I sould like to present an amendment ot the amendment.

THE PRESIDENT. What is your amendment to the amendment?

MR. CINCO. Mr. President, after the last word "law" of the amendment, let the following phrase be added: "with the exception of cases of contempt punishable by law."

MR. VINZONS. Mr. President, I should like to ask the author of the amendment to explin the purpose of his amendmenn.

MR. CINCO. The purpose of the amendment to an amendment is just to meet the objection expressed here by the Chairman of the Committee on Bill of Rights when he said that the Legislature or any of its committees must have an inherent power to punish contempt committed in its proceedings brought before it. So with this objection, the legislature or any of its committees may punish contempt committed in its proceeding.

THE PRESIDENT. Acepta el autor de la enmienda?

SR. ARANETA. Acepta su enmienda en la inteligencia de que si su enmienda es rechazada, entonces yo insistere en la mia.

EL PRESIDENTE. Es su derecho, su enmienda sera votada en el caso de que la votacion sobre la enmienda a la enmienda fuera desfavorable.

97 EL PRESIDENTE. Puede votarse la enmienda a la enmienda?

LA ASAMBLEA. Si.

EL PRESIDENTE. Los que esten en favor de la enjienda a la enmienda, digan si. (Una minoria:SI). Los que esten en contra, digan no. (Una mayoria:No). Rechazada.

MR. ABAYA. I have an amendment to the amendment of the gentlemen from Manila. Inser the words "imprisoned or" between the words "be" and "deprived", and strike out the words "nor imprisoned."

EL PRESIDENTE. Que dice el autor de la enmienda original?

SR. ARANETA. Acepto la enmienda a la enmienda.

EL PRESIDENTE. Puede votarse la enmienda a la enmienda?

LA ASAMBLEA. Si.

EL PRESIDENTE. Los que esten en favor de la enmienda a la enmienda, digan si. (Una minoria:Si). Los que esten en contra, digan no. (Una mayoria:No). Rechazada.

SR. LIM. Sr Presidente, deseo hacer uso de la palabra, en p pro de la enmienda original.

EL PRESIDENTE. Tiene la palabra el Sr. Delegado por Manila.

DISCURSO EN PRO DEL SR. LIM.

SR. LIM. Sr. Presidente, Caballeros de la Convencion: Como muy bien ha dicho el Chairman del Comite sobre Declaracion de Derechos, es preciso para la garantia de los derechos individuales que haya previamente una declaracion judicial a ese efecto y para eso nos ha hecho la cita de una declaracion hecha por Daniel Webster en el famoso asunto del Dermouth College. La enmienda del Delegado por Manila, tal como ha leido el los dos parrafos que aparecen en esta lista, solamente se refiere al derecho de un dididuo a la vida y a la libertad. En otras palabras, ninguna persona debe ser privada de su vida o puesta en prision, a menos de que sea de acuerdo con una decision de un tribunal de justicia. Este disposicion, como ha dicho el Delegado por Manila, es una mera aclaracion de la frase de process

of law; de ninguna mandera coarte el vedadero significado del due process of law, porque de todas maneras, no tenemos ninguna ley qae puede privar de la libertad o de la vida a una persona, a men os que sea po r medio de un tribunal competente. Lo que queremos e evitar es que el dia de mañana se pueda dar la interpretacion a la frase due process of law, en tal forma que se le pueda privar de la vida a una persona sin una sentencia del tribunal competente. El Delegado por Batangas, Sr. Laurel, mencione el hecho de que actualmente se estan celebrando vistas administrativas en relacion con asuntos gobernamentales, en las que no se requiere la intervencion judicial. En el segundo parrafo se sanciono eso, en el sentido de que "no public officer shall curtail in any way the liberties and rights of an individual nor deprive him of hit property unless in conformity with the reasonable law and procedure." Este segundo parrafo sanciona el actual procedimiento de determinar cuestiones gubernamentales mediante procedimientos administrativos con l a existencia previa de una ley. No se pide que haya sentencia judicial. Asi es que circunscribiendose esta enmienda a la privacion de la vida o de la libertad y que debe haber una sentencia judicial previa, nosotros sometemos respectuosamente que debe ser aprobada la enmienda del Delegado por Manila.

SR. ARANETA. Sr. Presidente, pido votacion nominalñ

EL PRESIDENTE. Se va a votar la enmienda original del Sr. Delegado por Manila. Se ha pedido que la votaci'on sea nominal. La Mesa desea ver si hay el n'umero reglamentario de Delegados que apoye la votacion nominal. (Algunos Delegados se lvantan) No existiendo el numero reglamentario de Delegados que apoye la votacion nominal, no ha lugar a la peticion del Sr. Delegado por Manila.

SR. ARANETA. Sr. Presidente, creo que el Sr. Delegado por Negros Occidental dease hacer una aclaracion de la enmienda.

EL PRESIDENTE. Se va a votar la enmienda original del Sr. Delegado por Manila. Los que esten enfvaor digan si.(Varios De-

legados: Si). Los que esten con contra, digan no. (Varios Delegados: No.).

SR. ARANETA. Sr. Presidente, pido la division.

EL PRESIDENTE. Se ha pedido la division. Los que esten en favor del Sr. Delegado por Manila, que se levantan. (Se levantan 38 Delegados.) Los que esten en contra, que se levantan ahora. (Se levantan 70 Delegados.) Por 38 votos afirmativos, contra 70 negativos, se rechaza la enmienda.

Lease la otra enmienda.

EL SECRETARIO, leyendo:

"No law shall be enacted which unreasonably descriminates against a class of person."

SR. LIM. Sr. Presidente, pido la palabra.

EL PRESIDENTE. Tiene la palabra el Delegado por Manila.

MR. LIM. The draft as it is reads as follows:

No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equel protection of the laws.

MR. FLORES. Mr. President, will the gentleman yield?

THE PRESIDENT. The gentleman may yield, if he so desires.

MR. LIM. Willingly.

MR. FLORES. Is the amendment of the gentleman not included in the last part of section 1, article 23, which says as follows: "No person shall be deprived of life, liberty or property without due process of law, not shall any person be denied the equal protection of the laws," in the Bill of Righs?

MR. LIM. I have just stated that precisely the interpretation given to this phrase "dedied the equal protection of the laws" renered these laws unconstitutional. There are reasons behind these laws which proved tht they should be accorded by the courts of justice the proper merts and considered as legal as good laws.

MR. FLORES. Therefore, your amendment is unnecessary.

MR. LIM. Precisely, we say that unless we strike our from

Constitution this phrase "equal protection of the laws," such laws that I have mentioned would not be constitutional, like the protection of pregnant woman laborers in our indu strial factories. and they are under equal protection of the laws. Our Supreme Court declared that they cannot be accorded the protection that our legislature wanted to give them. In other words, this is a curtailment upon the power of policy determination which the legislature wants to grant to the laborers and to the poorer classes.

MR. CONFESOR. Mr. President, will the gentleman yield?

THE PRESIDENT. The gentleman may yield, if he so desires.

MR. LIM. Willingly.

MR. CONFESOR. Supposing the legislature would enact a law fixing a minimun wage for cigar makers. What would be the effect of this amendment to that law if this amendment is approved? Would not this amendment prohibit the enactment of a minimum wage for a certain group of laborers?

MR. LIM. If the law proposed would only prescribe the minimum salary of cigar makers, the law might bedeclared unconstitutional under the phrase "equal protection of the laws" for the reason that that it onlyprescribes for a cetain class of laborers of laborers and not all the laborers in general.

MR. CONFESOR. Would the amendment remedy the situation?

MR. LIM. The amendment proposed By Delegate Aranets would remedy that situation because of the phrase "reasonable discrimination."

MR. BOCAR. Mr. President, will the gentleman yield ?

THE PRESIDENT. The gentlemanmayyield, if he so desire.

MR. LIM. Willingly.

MR. BOCAR. I objecto to thatw word "unreasonable." Will you please explain it. Does it contemplate that under this amendment there is an unreasonable discrimination?

MR. LIM. It does contemplate.

MR. BOCAR. What, for example?

M. LIM. By citing yoh a ese that occurred in the United States. A law was approved whereby all establishments having more tan five employees or marchants under it, could not have more than 20 per cent of its employees consisting of agents. Such a law was declared unconstitutional by the Federal Supreme Court indicating that it was unreasnable discrimination. If we had this amendment as proposed By Delegate Araneta, in our constitution, we could approve such a law in this jurisdiction because it would consititute a reasonable discrimination between citizens and aliens.

MR. BOCAR. In other words, this amendment does not seek to do away with all kinds of discrimination.

MR. LIM. It does not . It gives to the Legislature more power than it has actually. The purpose of the amendment is to give the legislature more power than it has actually under our system of law, a power simil r to the one possessed actually by the U. S. congress.

MR. GUZMAN (AL.). Mr. President, will the gentleman yield?

THE PRESIDENT. The gentleman may yield, if he so desires.

MR. LIM. Willingly.

MR. GUZMAN (AL.). Is it not true that what is being intended in the proposed amendment is included in the last phrase of section 1 of the Bill of Rights, which says: No person shall be denied equal protection of the law?" Now, is it not a fact that the wordings used by the Committee could be applied to individuals as well as to classes or groups of individuals while the proposed amendment would only apply to a class of persons or class of individuals, but never to individuals?

MR. LIM. It refers also to individuals. When we talk of classes we include individuals as the unitl

MR. GUZMAN (AL.). Would you have any objection in drawing a line so that the convetiam may definitely know what is meant tby the class of persons that is being mentioned in the proposed amendment ?

MR. LIM. I was referring to the case or pregnant woman lagorers. If we had this amendment approved by this convention, then we could approve a law legislating in favor o f women pregnant laborers in our industrial factories, thus a claxs of persons, women pregnent laborers, and as interpreted by our local supreme Court in the case or Pomar, such a law was considered as vilative of this provision of equal protection of the any person under the law.

MR. GUZMAN (AL.) But would not this phrase equal protection of the laws comprehon the proposed amendment? That is my question.

MR.LIM. It will not; a I said, it was declared already as constitutional under this phpase as itiis.

THE PRESIDENT. The time of the gentleman has expired.

MR. LAUREL. Mr. President and gnetleman of the convetion: It will be inconceivable if we approve the amendment suggeste after having turned down the previous amendment, but I am not basing my reason of my objection on that grund. I simply desire to call most respectfully the attention of the members of this vonvention to this fact that under the amendments prepared, we find that no law shall be enacted which unreasonably discriminates against a class of persons. No law, that is to say, the Leislature may not enact any law which discriminates unreasonably, so tha a departments secretary, for instance, may discrimime because it is the Legislature that is enacting the law, which it will be the

1 Legislature

Legisture that may discrimanate g ainst the class of persons. Whereas, if you red the draft as it is, you will find "no person shall be derpived of his life, liberty and progerty withot due process f law nor shall any person be denied by anybody whether the Legislature or the Executive of the ccontry that anybody may not be denied equl protection of the laws." Whereas under this proposed Amendment, only the Legislature may not discriminate, meaning that othr department may discriminate. I am sure that the wishof themembers of this convention must be aginst that.

Now, as regards the case ofFumar decided by Justice Johnsmn with the concurrence made by a number of justices, one of thm is our hnored, distinguished member here, Justice Romualdez, I think that the citiation of this case is rather unfortunate, because to mayopinion, it has no applicationhere, becauseb that involves the freedomof contract in regard to certain law enacted by the Philippine Legislature providing that women laborers in different cigar factories should be given thirty-day vactation with ay befos delivery and another thirty days after delivery. Now, there are two points that were touched by the Supreme Cart in that case : Fist, that it impaired the freedom f contract. That is to say, you can not impose upon the owner of thecigar factory to enter into a certain contract under certain ters. And that is the principal basis of the supreme Cot in that case. But the most important reason which is alightly rouched upon by the Supreme Court was the faxt that the law deprived and the owner f a factoryof his property without due process of the aw. Why ? Because thebasis of the law is the mere fact of pregnancy. If a woman gets

pgnant, why shold we make owner pay during he monthe of her pregnancy whm he is not the author of the pregnancy. That is the reason.

MR. CON ESOR. Mr. President, will the gentleman yeld?

THE PRESIDENT. The gentleman mayyeild, if he so desire.

MR. LAUREL. With pleasure.

MR. CONFESOR. Suppesing that a law would be nenacted tothe effect hat pregnant womenworking in factories or women wrking factories should they become pregnant letimately, the shuld be paid three months or two montsh salary after delivery. Woudl that be constitation under the present draft as submitted by the Committee ?

MR. LAUREL. It was, Mr. President, goint to that point. In this connection I want to say that one criticsims against the Bill of Rights, especially by one of our distinguished political ascientest, Dean Maximo Kalaw, is that we re adhering to necessities of natual law. Then, as a matter of fadt, we should give proper aconsidsationto socil justice and to other rights of the stte.

I want to say, however, tht as this draft is made, we have taken care of that social justice, part of the constitution by providing in Article 13, sectin - and lo that it shall be the duty of the legislatue to give special protecgion and considerationto the labor problems, to child labor, to labor nd capital, to landlords and tentnats. We are socializing and ntionalizign many thing that are incorprated here; and I want to say, under this enstitution, that ~~XXXXXXXX~~ under this povision, in view of the collateral provision, s that decision of the Supreme Court , I do not think can any longer stand, because under this

cpnstittion (draft), it will be perfectly proper evenunde due pro process of law and equal protectins of he laws for the Legislatue to ena ct legislation clacucated to protdt the interest of the labors and solve the problems involving lands and tenacy and the like. And it will be necesaryin that case to make reference to eugal protectionof the laws, because first, on the grond that thereare other provisions indorperated in our constittion, second, it might be properly upheld under the broad doctrine of the police power of the State.

MR.PEREZ (J.). Mr. President, will the gentleman yield?

MR PRESI NT. The gentleman mayyield, if he so desirts.

MR. LAUREL. most gladly.

MR.PEREZ (J.). Would the law which wuld prohibit the employement of alinesn in anyfactory or establishemnt bevalid under the cduse that "no person shall be de prived of equal protection of law?"

MR. LAUREL. That might be also a subjectof legislature.

Now, there are certain fundametalrights, you will observe, Mr. Delegate, that the law refers to persons --no person shall be deprived of his life, liberty and property--because the right to life, liberty and property andotherprotection of our laws is not aimed exclusively to our citizens. Because, as I stated to your, not onlyur citizens are protected, but the foreigners are also protectd of their rights.

Now, of course, right here in this draft, we are discriminating on a certain fundamental question against foeigners, and we are not doing that for the first time; we have beending tht from the start. Foreigners can

not vote, because theylack political attachjent. We discrimmate right now, evenwithout that provisioninthis law. Foreigners cannot own or purchas public land; so that, in point of fact, wear discrimmating against foreigners in the exercise of political and civil rights.

Nobody has raised a question as regards the constitutionmityof such a proision enactd here by congress or by our own legislature. And right here, as I have said, we have rovided for he nonservation of our natural resources as one of the fundmental philosophies of the draft of ths onstitution

MR. PEREZ (J.). The gentlemanI think, has stood that there is no jurisdictionon this subject. as he not gone in re case 116, pacific, 1037 Balke Vs. Mclung, 172 U. S., 237 Suly Vs. American National Bank, 178, U. S. 287 decided by the Supreme Cart f hthe United States that sch a law wold not be constittional because it 3 ill be a violationf the law which provides that no person shall be denied of equal protction f he laws. If we incoporate tis constitutin, our legislature can not pass a law whch would prohibit the employment of aliens in factories and establishments.

MR. LAUREL. It will be a matter f interpretation. I suppose, Mr. President, we willnot be necessiarily bound by the decisions of the estate corts. And I suppos, as I said, there will be anample field for our coets, and that is the reason why even at the risk of this provision being somewhat vague, it is a matter of policy for the courts to be guided by the nationah policy which is outlined and given by the Legislature. What is what is meant whenit s stated that they can nt by judicial statements, that is to say, our courts are not supposed to interprete the law blindly, but they are supposed....

to be necessarily implic by the philosophy of this constitutinn which we adopt and the legislature will, it is expected, enact laws inharmony with the tnedency and with the philosphy of tha constitution.

MR. PEREZ. Do I undestand the gentlman as speaking of specifc cases involging the interpretation of this laws, which means that the act wit t the other provisional with the constitution?

MR.LAUREL. It is not necessary to resort to other coursec. If for instance we discriminate agaist foreigner.

MR. PEREZ. If it is necessayin the interest of social justice for the prdection of our citizens I don't see reasn why our country may not interpret this provisin of the constitution even if the legisaure shold deiscriminate against foreigner in line with the broad policy of our draft.

MR. PEREZ. Does the gentleman mean to saythat in so interpretaing these aws which we have borowed from ghe federal constitution we may destry the jurisprudence in the United States in cases f thse nature ?

MR. LAUREL. Our constitution mayonlydestroy but it may lay down doctrines which are adoptd to theneeds,tradition and idoscincracies of our people. But withnotstanding the facts that we have borrowed these provisions from the Unitd States, w e arenot bound ncessarily bythe interpretation tht they have given because they cannot be adpted to the changing conditions of human ffairs.

MR. PEREZ . I would just life to clarifyone point. Supposing that we amendm this word "person"by insetting the word "citizen" so that the legislature will enact a law which will discrimanate against alinens, what will be your opinion?

MR. LAUREL. I think it is better to leave in the draft to the effect tht no person may be denied equal protection of the law.

MR. SANTOS. Fo an information. Does gentleman believe tht this provision will not be batacle to labor legislation or such laws insuded for hr protectionf of labor ?

MR. LAUREL. It will not be an obatacle. You will observe gentlemen from Nueva Ecija tht the first paragraph is a general provision and under this general provisinit may be pocible to suppress and eliminte amnyother provisions that will be considerd later. For instance we refer in this draft about pvetty. That poverty should not be ground for denial to free acess to the courts. Broadlyspeaking suchphrase equaly protection f the laws means tht every body from the highest officers to the lowest officers are given the necessary protection. Therfore byimplication they may have theliberty, and th freedm to go to court. And s Mr. Justice Morland himself said in one cas, the higher the official he is the more he is bound by the supremacy and thmajesty of the law.

MR. VINZONS. M r. president, mayI speak now infavor ?

MR PRESIDENT. Yes.

MR. VIN SONS. Mr. President, if I speak now in favor of he arneta amendment, it is because I am prompted by a desire to inform te members of tis emminetn cknstitutonal ase assembly that while I hold that the bil of righ s shoupd be cnsidered as sacred and immutable by themembers of the cowventin, we should at the sametime observe that under the best consedered thrity on comstittinal law, there is at present a move to hange th Billof Rights evdn inthe United States.

Before I proceed, Mr. Prsident, I would went to say this That i have presenteda precept to the same effect that is contained in the dranf of the cnstiutin, as prsented by the committee of seven, and a s a member of the commite on Bill of Rigs, I sataine dr judgment inthe inclsion of the provision which is now embodied in the draft. MayI say also, Mr. President, that having been under the careful tutelage as

a student of the getleman from Batangas, the amendmetoof the delegate from Batangas, Dr. Laurel, has beenl imbued withhs ideas on Constitutionl law,and whatever opinion I haveat present is the result f his careful training. Mr. President, if there is any part in the constitutiam thqt should be held less susceptibel of amendment,it is thebiil of Rights . There is no part intheconstitution, Mr. President, that has found consecration from tije immemorail than the provision embodied in article III which is the Bill of Rights of the draft. But when I speak here in favor of the Araneta amendeh regarding the equal protection of the law, it is simply my desire, Mr. President, to call the attention of the convention to the vast jurisprudence with respect to the nterpretations and construction of ths provision and to the changing interpretation that has been given toit by the constitution of the United States and by the courts f these islands. It has ben held, Mr. President, that the phrase "that no man shall be denied the equal protection of th el laws" is the bulwark of capitalism which has prevented much social legislation whichis favorble to labor and tomaternity.We may cite here endless list, Mr. President of the decisions of the Federal Supreme Cort from the time of Marshall up to the time of Justice Holmes, two eminent justices who ave always sustained the theory that social legislation must be held parmount ever the provisions of the constitution regarding the equal protection of the laws.But at the same time, Mr. President, we shold observe tha the inclusion of this provision in the constitution does not serve to repudiate that theory, but on the other hand, is serves tomake it clear and definite. The origimal provision says : " No person shll be deprived of the equal protection of the law." The gentleman from Btangans is largely right when he said that this phrase doe not apply to th Legislature but also the Executive and the Judicial Departments of the Government..

But

But we contend, Mr. President, that there is no necessity of presenting an amendment in order that we should bind the other departments of government except he legislature by the mandate of th q equal protection of the laws because the only duty we have is to put in effect the laws passed by the legislature. The bobject of this, Mr. President, we contend, as intended by the original framers and as it must have been understodd by King Hohn was to limit the power of the king in order that the right of the individuals should not be deprived by the passage of laws that discrimimate against them But ...

MR. VINZONS. .....But the progress andadvancement of the nations f the world have changed to a great wxetent our teory of equal protection of laws. In other states of the United Stats laws have been enacted which discrimimate aginst capital. Labor Legisaltion has been passed in most advanced nation of the civilized world which would give protection to la or and to the individual as against class. There is at present, Mr. President a class of rights betewen individuals and groups in society a class which may termnate in co ntries like Russia in bloody revolution unlike tin the United States with peaceful legislation. In the Philippines, Mr. President, a case has already been decide d by the our highest tribnal wherein a law was made unconstitutional which gives protection to maternity on the sole ground that it denies the equal protection of laws not individuals, Mr. President, but to powerful corporations. The progress in the economic life of the nation hwe but a distinct classification between the so-called ploretariate and bourgeousie Soveit Russia, has in fact abolished the Bill of Rights and substituted a socialistaic principles. The United States preserving the equanimity has seen a middlegrand wherein individual rihts are protected and at the same time Legislate

against classes and against social groups. We find, Mr. President, that ten so-called class struggle may be the cause of a much bloodshed and revolutionnot only in the Philippies but in other countries where progressie ideas have not been adopted. While I believe thatthe constitution cannot and shold not prove for all cases leaving to the courts the interpretation of its provisions in order to suit them to circumstances and to conditions of the times we can tell at the sme time, Mr. President, that the presence of this provision will not in anyway hambper th e proper exercise of the courts in giving equal protection t o every individual by the provisions of law. How can we conceive of an instance Mr. President, whre a Department secretary will denay a person an equal protection of laws just because the bill of Rights will provide that no law shall be enacted which discriminates against a clss of people? May I say, Mr. President, that the equal protection of laws to the individual is inherent to every government. Is it not given by the sate to the citizen. It is inherent inthe citizen himself. It exists, Mr. President, even withot a provision in the constitution and even if we eliminate in the Bill of Rights, the individual also cannot be depried of the eual protection of laws. But at thesame time, Mr. Presidet, th Bill of Rihts Rights does not contain a provision for social legislation wherein the Legislatue may discriminate reasonably against a class or a group. Woth this provision Mr. President, we find a poor, humble citizen may not be taxed more than any other citizn on the same basis because of the uniform aw of taxation. Wih this prøvision for the equal protection of laws a pesson may not prove of his right because the Dpartment Secretary will grant he has the right to discriminatesgainst in the absence of a constitutional provision. On the other hand, Mr. President, the absence of the provision such as this proposed by Delegate Araneta which

authorizes in fact a reasonable discrimination not against individuals but aginst a grogp of individuals which will hamper if not enielyfrastrate mch of the needed legislation this our own coutry. We are ,t present embrking on a new indepedent life. We are all aware that the problem s of the future will not be problems concerning government and policis. They will no lon er be highest ideal of struggle of a dependent pegle against a sovereign power. But a struggle, Mr. President, will be a filipino against his fellow citizen, an individual against groups of individuals, the ploretariate against bolshevism, labor against capital. We should visualize and hve a brodder view f the future if we want that our government we are establishing should be stable and permanent. If we want that our constitution we are drafting now should be enduring and lasting and for all eternity . . . . .

THE PRESIDENT. The time of the gentleman has expired.

MR. VINZONS. If the convention will please concede me a few more minutes to continue....

L PRESIDENTE. Los que esten conformes con la peticion del Delegadopor Camarines Norte, tengan la gondad de decir si. (Una mainoria: si.) Los que sehen en contra, si vanse decir no. (Una mayoria: Nº.) No ha lugar a la peticion.

MR. VINZONS. I wish to give my thanks to the members of this convention for denying me the privilege of conceding a few more minutes to contine my speech.

SR. ARANETA RAZONA SU ENMIENDA.

SR. ARANETA. Señor Presidente y caballeros de la Convencion: Soy el primero en comprender la impaciencia de esta convencion para tener cuanto ants uja constitucion aprobada; pero al mismo tiempo yo quisiera queme oigamis nada mas que por unos diez minutos para exponer mis puntos de vista sobre

esta cuestion muy fundamental, a mi juicio. Señores, concebi esta enmenda despues de habeme dedicado por algunos meses a la lectura de un libro que contine la famosas disidencias del Magistrado Jolmes. En este libro encontro muchas decisiones en las que dicho magistrado registro su giborosa disidencia. Me limitare a poner a vuestro conocimiento tres de esas famosas decisiones.

Una es del caso enta Gilbett en donde funda su disidencia de la decision del Tribunal Supreme Federal al declarar anticonstitucional una leysobe donaciones que tuvieron lugar durante los ultmos cinco años antews dehaberfallecido el donante y no imponia impuesto a las donacions que hayan tenido lugr antes de esos dinco años. ?Por que s declaro anticonstitucinal? Porque la ley negaba a quelàs que habian recibido las donaciones durante seis años antes de mirrir el donnte,igual proteccion de la ley.

Otro caso es el de lusbill....En donde tambien la corte Suprema Federal declaro anticonstitucional una ley que imponia un impuesto shipotecas que venoia en cinco años. Se declaro anticonstitucional, porque el impuesto no se extendia a hipotecas que vencieron despues de cinco años. Tambien se dijo que se negaba la igual proteccion ante la ley.

El ultimo ese se refiere al caso contra punsylvania, en donde se declro anticonstitucional una ley que imonia un imputo a compañiasde utilidad pblica pero no a personas qu se dedicaban a utilidad pubicas, y la corte Suprema declaro que era anticonstitucional, porque negaba igual proteccicion ante la ley.Todos aquellos quequieren negar a la corte suprema El derecho de enmendarh plana de la Legislatura degen pensar muy en serio en este principio constitutional de igual proteccion ante la ley.

Sr. Pres: dsspues de aquela lectua, de aquellas fomosas disidencias, estuve cabilando de que forma podriamos imprimir un nuevo giro.

SR. ORTIZ. Para algunas pregunas al orador, señor Presidente.

E? PRESIDENTE. Esta dispuesto el orador a contestar ?

SR. ARRETA. Quisiea antes terminr porque no tengo mas quequince minutos; si despues de terminar, la convencion me de un pco mas de tiempo tendre muchisimo gusto de contestar sus preguntas.

(Prosiguiendo) Estuve cavilado enque forma podriamos imprimir un nuevo giro a este estado de cosas y ante el comite propuse una enmenda que no fue aceptada; y despues, yo mismo tampoco estaba d l todo convencido de que aquella enmienda articulaba bien el ensamiento que yo tenia. Y despues de un maduro estudio, he creido conveniente someter a vuestra consideracion esta enmiena que dice lo siguente : "Ninguna ley se dictara que irrazonablemete discrimine contra una clase de persona." Algunos reguntaran por qe se ha añadido la palabra irrazonablemnè." para ais ensanchar mas la discrecion de la legislatua.

Señor Presidente: aquei el Delegado Lim ya dijo la razon de ser de esta disposicion de "igual proteccion ante la ley;" el unico proposito era protger a los negros, pero como los tribunales, hacindouse de su "judicial statemanship," ensanchearon estas palabras el extemo que en el ejercicio a que hn llegado las tres decisiones que ha hecho mencion.

Yo, como el que mas quiero proteger la prpiedad pero al mimo tiempo soy amante de un liberalismo a tono con las circunstancias modernas. Muchas de esta leyes que le tribunal Surpremo ha declardo anticonstitucinnal son de la clse de amergencia para las cuales se quiere dar mayor facultad al Presidente de los Estados Ujidos. Hubo un tiempo enque se declaron anticonstitucionales varias leys del Congreso porque el Tribunal supremo de America trato de etajar el progreso y las nuevas ideas quese desarrollaban en el capitolio.

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Sª. Prewidente oy a trmnr, solamene dire para demostrar lo anticuando de estás palabras y recorderles que las constituciones modernas tienen preceptos enteramente contrarios a esto que sy discutiendo. La consitucion de alemania dice que el trabajo recibra especial proeccion de la ley' en otros sitos die que la maternidad recibira especial proteccion de la leyñ no es posible avsolutamente decir que toda persona tiene derecho de igual proeccion ante la ley; el pobre necesita mayor proteccionde la ley y, por esta razon pido que se descarte de este proyecto de cstiutucion este anacronismo, "igual proteccion ante la ley," y en su luar se pna uno que este mac a tono con los tiempos.

He dicho.

EL PRESIDENTE.Puedo votarse la enmienda?

SR. LIM. Yo pido que la votacion sea nominal.

EL PRESIDENTE.Hay u a cuarte parte de la convencion qeqapoye la mocion? (Varios voces: si y no.)

Los quels esten conformes cnon lamocion tngan la bondad de pnerse de pie. (Veintiocho delegados se levantan.) No hay una cuarta parte de os delegados prasentes que apye la mocion, y pr tanto queda denogada la mocion.

SR. LIM. Pedimos que se cuente cotra vez elnumero.

EL PRESIDENTE. Acaba de contarse por el Secretario. No hy numero sdficiente Que apoye la votacion nominal.

RECHAMIENTO DE LA ENMIENDA ARANETA

EL PRESIDENTE. Ahora se va a votar la enmenda Araneta. Los que esten confromes condicha enmienda, que digan si. (VariosSres. Delgados Si) Los que no lo esten que digan no. (varios Sres. Delegdos: No.)

Varios Voces: Division.

EL PRESIDENTE. Los que estne conformes con la enmienda araneta,que se ponan de pie. (48 Delegados de hegan an) Los que no lo esten aue se pongan tambiendo pie. (79 Delegados s e levantan.

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Por 48 votos afirmativos conta 70 negativos, se rechaza la enmienda.

Lease otra enmienda.

EL SECRETARIO.

By Delegate Cabarroguis.

Page 3, line 4 before the word "private" insert the words Unless freely given, donated, or otherwise ceded by the owner."

EL PRESIDENTE. Quedice el autor?

EL SR. CABARROGUIS. Mr. Predient, I withdraw my amendment

EL PRESIETNE. El autor de la enmienda rtira la misma

Lease otra enmienda.

EL SR. SECRETARIO Del Delegdo Diez:

Pagina 3-A lines 6, entre las palabas "privada" y "para" insertese la palabra "sin" en la linea 7, sustituyase la palabra "sin" por"y previa."

SR. ORENSE. SEñor Presidente, pra una enmienda a la enmienda.

EL PRESIDENTE. Esta enmienda sera endosada al comite de Estilo.

SR. ORENSE. Si me permite la Mesa yoformulare mi enminda, que es me o sigue: ""NO se expropiara la propiedad privada parafines de necesidad y utilidad publica sinprevia y justa indemnizacin." Las palabras que yo introduzco de "propiedad" y"previa" nsonde etilo, y si me permite la Mesa voy a decir dos palabra sobre las misma.

EL PRESIDENTE. Hymuchas enmienda s de esa naturalez, y una de ellas es la del Delegdo Nepomuceno.

EL SR. NEPOMUCENO. Mi enmineda de es la misma naturaleza que sa y pido que dicha enmiendal igual que las otras de igual indole sen endosadas al comite de Estilo

EL PRESIDENTE. Estas enmiendas se enviaranal comite de Estilo.

SR. ORENSE. Yo quisiera antes explicar a la Asamblea

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de la naturaleza y de los fundametos de mi enmienda para que elà pueda detzminar si debe ser enviada al comite de Estilo o debe ser resuelta aqui.

EL PRESIDENTE. La Mesa creeque los Sres. Delegados. tiene copia de esas enmiendas y, por tanto, la Mesa sometera a la Asamblea esas enmiendas para quesella decida si deben ser o no enviadas al comite de Estilo.

MR. PERRZ. Mr. Presidnt, I think the Assembly is not very well infomred of the nature of the amendment. If the chair would grant me just to sayafew words in order to expldin it.

THE PRESIDENT. The asembly will deci e. Each and every member of the Assembly has red the amendment and will decide whether this amendment should be sent to the Committee on Style.

SR. ORBESE. Entonse, S. Presidente, voy a consumir un turno en entra de la mocion de quevaya al comite de Estilo mi enmiendaa la enmienda.

EL PRESIDENTE. No es ninguna mocion. Es una sugestion que hace la Mesa a la Asamblea.

MR. BUSLON. Mr. President, even if an amendment were judgedbythe convention as an amendment which should be indoresed to the committeee on Stule, is not an authord privileged to defend his amendments?

THE PRESIDENT. iT will de os right away, because it is supposed that the Assembly can distinguishe very well whether the amendment should be sent to the Committee on Stle or be discussed on the floor.

MR. BUSLON. We would lke torequest the Chair's opinion before sending this to the committee on Style.

THE PRESIDENT. The opinion of the chiar is to ask the Assembly whether to send it to bhe committee on Style.

MR. INTING. I would like to bring to the attentinn

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of the chair tht the above amendment submitted by Dlegate Diez, Nepomuceno, Buslon, Inting, Ribo, Rumar, Perez, Bañaga, are of the same nature.

THE PRESIDENT. Yes. What does the gentleman want ?

MR. INTING. We would like to request the chiar that all these amendments be taken up together.

el presidente. La Mesa va a consultara la Asamblea si dodas enmiendas de los Diegados diez, Nepomuceno, (R.), Buslon, Inting, Ribo, Pere, (J.)' Y Binag deben considerarse como enmiendas que han de enviarse el Comite de Estilo o no.

MR. BUSLON. Before the question is submitted to the the convention , Mr. President, I wold like to saya few words, only.

THE PRESIDENT. The Chair has already ruled tht there can be no debate on this question.

MR. BUSLON. But,Mr.President, I wonder if the delegates in this convention simply because the majority of us here are impatient, should XXXXX be deprived of his rifht to defend whthe thinks should be in the constitution.

TH E PRESIDENT. The Chair has already ruled that the Assembly should decide on this matter without any debate at all.

MR. BUSLON. May I say a few wods. I sustain that before a man is judgd he should be heard.

THE PRESIDENT. The gentlemanmay appeal against the decision of hthe Chair if he wishes.

SR. OZAMIS. Para una informacion, S. Presidnte. Se va entender que el infome que rinda el comite es Estilo sera final?

EL PRESIDENTE. S.S. debe haber leido el reglamento de la Asamblea se somestera a la Asamblea. Se da el floor al proponente de la enmienda.

S$_e$ va a voyar la cuestion de si deben enviarse estas enmienas al comite de E$_s$tilo.Los queste en favor de qe se envian estas enmienas al comite de estilo, digan si. (Varios Delegados: Si). Los que esten en conta digna no! (Varios Delegados: No) Division. L^{v}s que eten en favor, que se levantan. (Se leyantan 54 Delegados) Los que esten en contra, que se leantanahora. (Se levantan 56 Delegados.) Por 54 votos afirmativos conta 5 negativos, la Asamblea decide quese discuten estas enmiendas en el floor.

SR. ARANETA. S^r. Presidente, quisiera explicar mi voto. He votado en contra de que se envie esto al comite de Estilo, porque si bien es verdad quemuchas de stas enmiendas son de estilo, en cambio hay una por lomenos, la del Delegados Perez (j.)...

EL PRESIDENTE. La Asambla ha decidido que todas estas enmiendas no son de estilo y debendiscutirse en el floor.

SR. ARANETA. Sr. Presidente el registrarse mi voto, la Asamblea no se ha dado cue ta...

SR. RAMOS. S^r. Presidente, el Delegado por Manila esta fura de orden, en vista de que el Asamblea ha resuelto ya la cuestion que suscita el Delegdo por Manila.

EL PRESIDENTE. Se esatiene la cuestion de orden Leqe la enmenda del Delegado Diez.

EL SECRETARIO, leyendo:

> Entre las palabras "privada" y"para" insertese la palabra "sino," y en la linea 7, sustituyase la palabra "sin" por "y previa."

SR. NEPOMUCENO. (A.) Mr. Presidente, pidoque se lea ahora lodo elparrafo tal como queda enmendado con la enmienda del Delegado por Surigao.

EL PRESIDENTE.Lease

EL SECRETARIO . Lo lee.

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MR. CINCO. Mr. Presidente, just for one information. I would like to know whether this amendment is acceptable to the commitee de Ponencia.

EL PRESIDENTE. Que dice el Comite dé Ponencia?

SR. SOTTO (F.). El Comite no acepta la enmienda.

SR. ORTIZ. Sr. Presidente, para una enmiena a la enmienda. MI enmenda a la enmienda es que se diga "previously assessed and .....

Yo creo, Sr. Presidente, que el proponente de la enmienda a la enmienda.

SR. DIEZ. S_. Presidente, no puede aceptar la enmenda a la enmienda por las razones quemas tade expondre.

Sr. Prewident, yo qusiera quemi enmiena se considere juntamente con las enmiena dde idéntica anturaleza, que tien den a establecer como imperativa y obligaroia de que antes deque una propiedad privada fuera expropiada previo al dos posiemineto del propietariode la finca que se trata deex-propir, queeste fuera previamente pagado del importe justo y de la justa indemnizacion del valor de la finca.

EL PRESIDENTE. La Mesa llama la atencion de la Asamblea a qe, a pesar de su decision, todas estas enmiendas esten Manila, S_. Araneta. Lease esta enmienda del Delegado por Manila, para que la Asambla vea si, discutiendo est a enmienda, pueden quedar consideradas implicitamente estas enmiendas.

EL SECRETAMIO leyendo:

By Delegate Araneta and others.

Page 3, lines 6 and 8, strike out the paragraph appearing in said lines and insert inlieu thereof following :

"Private propertyshall not be taken fro public use, good, safety or welfate without just compensation having first beenmade to or paid into court for the owner.

"AIn case of dispute as to what i just compensation thesme shall be determned by the court of justice."

EL PRESIDENTE. La Asamblea desea quese siga dis-

cu

cutiendo una po una todas estas enmiendas ?

SR. ARANETA. Sr. Presidente, podriamos discutir este enmieda s juntamente, pero enla inteligencia de quese aumentara los turnos.

EL PRESIDENTE. Entonces, no hemos ganado nada/ podemos discutr una por una las enmiendas?

SR. ARANETA. No tengo incoveniente, con tal de que se me de un truno.

EL PRESIDENTE. Su señoria puede hablar.

SR. ARANETA. Si,erpo como son cuatro, cno o sies los proponentes de la enmienda.

EL PRESIDENTE. Estamos discutiendo la enmienda del Delegado Diez.

SR. PERFECTO. Sr. Presidente leyendo las enmiendas de los Delegados Sres.Diez,Buslon,Inting, Ribo, Momar, Perez, (j). Y Ening, encuentro que la tendencia epital de todas ~~MMEX~~ esas enmiendas es exigir la compensacion previaa a expropicion por Consigueinte, propongo, Sr. Presidente, que todas estas enmiendas se distutan conjuntamente, es decir, quese consolidan estas enmiendas en una sola.

EL PRESIDENTE. No se puede, porque estamfraseadasde distinta manera ypor eso la mesa propuso de quese enviran al Comite de Estilo, a menos quela autories convenganen presentar una sola enmienda reformando la fraseologia.

SR. ORENSE. Sr. Presidente, tengo una enmienda a la enmienda, en el sentido de que de ~~suprimanse~~ mencionen las palabras "necesidad y utilidad publicas" que son dos conceptos diferentas. No se si en ingles no es asi; epro encastellano debe decirselas dos cosa: "Necesidad y utilidad."

SR. RAFOLS.Sr. Presidente pido que se suspenda la sesion por dos minutos, para quepedan reunirse los autories de esas enmienda y conve r en presentar una sola enmienda.

MR. GRAGEDA. It is veryclear that the principle involved inthis amendment is only one, and tht is the requisite of Previous compensation. If that is the case, Mr. President, why not appeove this amendment in principle, and then leave the rest to the committee on Style ?

SR. OZAMIS. Sr. Presidente, propongo una enmienda a la mocion del Delgado por Cebu, Sr. Rafols, en el sentido de que en vez de que se suspenda, se levanta la sesion, suplicando a los autores de estas enmiendas que se reunen o procuren reunirse con el fin de llegar a una inteligencia y presentar solamente una enmienda refundida, para considerarla mañana como asunto preferente.

MR. BUSLON. I second the motion.

EL PRESIDENTE. Cuales son esas enmiendas?

SR. OZAMIS. Todas las enmiendas referentes a este parrafo del "Bill of Rights."

SR. RAFOLS. Acepto la enmienda del Delegado por Misamis a mi mocion.

EL PRESIDENTE. Se ha presentado una mocion en el sentido de que los autores de las enmiendas en la parte del "Bill of Rights" correspondiente a las lineas 6 y 7, convengan en una sola enmienda y la presentn mañana para la consideracion de la Asamblea. Hay alguna objecion a esta mocion? (Silencion.) La Mesa no oye ninguna. Aprobada.

LEVANTAMIENTO DE LA SESION

Se levanta la sesion hasta mañana a las 3:00 p. m.,

eran las 7:25 p. m.